707.

SUPREME COURT OF THE UNITED STATES.

No. 79.

JOHN HOLMES ET AL., APPELLANTS,

VERSUS

DANIEL TROUT ET AL.

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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To John Moreland, William Moreland, Walter Moreland, Daniel Trout, Jeremiah Trout, Jacob Overpeck, and William Buchannon:

Whereas an appeal has been prayed by John Holmes, Michael Omealy, Richard Caton, Hugh Thompson, and William Slater, which is hereby granted, to the Supreme Court of the United States, to reverse a decree of the seventh circuit court of the United States in and for the Kentucky district, pronounced on the 8th day of May, in the year 1830, in a suit in chancery, wherein the said John Holmes, &c., were complainants, and the said John Moreland, &c., were defendants.

These, therefore, are to cite and command you that you be and appear in the Supreme Court of the United States, in Washington city, on the second Monday in January next, and then and there to be heard, if any thing you have to say, upon the said appeal

Witness my hand, as Judge of the district court of the United States in and for the Kentucky district, this 27th day of December, A. D. 1831.

JOHN BOYLE.

Came to hand too late to execute.

THOS. SMITH, jr., *D. M.*,
For John M. McCalla, M. K. D.

UNITED STATES OF AMERICA, *7th Circuit Court, Kentucky district, sct.*

Parties' names.

JOHN HOLMES, &c., *complainants,*
against } *In Chancery.*
SAMUEL TODD, &c., *defendants.*

Pleas before the honorable John McLean and John Boyle, Judges of the seventh circuit court of the United States of America in and for the district of Kentucky, held at the Capitol, in the town of Frankfort, at the May term, in the year 1830.

Be it remembered, that, heretofore, to wit, on the 23d day of November, in the year 1815, came John Holmes, &c., by their counsel, into the clerk's office of the court aforesaid, and filed the following bill in chancery against Samuel Todd, &c., to wit:

Bill.

To the honorable the Judges of the Circuit Court of the United States of America, for the Kentucky district, in Chancery sitting:

Your orators, John Holmes and Michael Omealy, Richard Caton, Hugh Thompson, and Will. Slater, citizens of the State of Maryland, humbly complaining, show to your honors, that *Edmund* Voss, on the 11th day of October, 1783, made with the surveyor of the proper county the following location.

"Edward Voss enters 10,000 acres by virtue of two treasury warrants, No. 8,991 and 8,990, beginning at the northwest corner of Patton's 8,400 acres survey; thence, with Allen's line, westwardly, to the river, and along Roberts's line, on the east, for quantity" "Also 5,000 acres by virtue of treasury warrant No. 8,989, beginning at the southwest corner of Patton's 8,400 acre survey; then westwardly, with Patton, Pope, and Thomas's survey; thence, up the river, and on Patton's line, on the east, for quantity." That surveys having been duly executed on said entries, the same were assigned to a certain Peyton Short, patents duly issued to him thereon, bearing date the 16th and 12th days of March, 1790; which patents and copies of entries are herewith filed, and prayed to be taken as a part of this bill. Your orators state that said Short having thus obtained his patents, thereafter, to wit, on the day , sold and conveyed his whole claim to said lands to your orator, John Holmes, as will better appear by deeds herewith filed, and made a part of this bill. Your orators further state, that, although the title was acquired, and is held by Holmes from Short, yet, by contracts with said Holmes, the estates is the joint property of your orators; and said Holmes only holds said deeds for the joint use and benefits of your orators. Your orators charge that the said entries of Edmund Voss are special and precise; and that the objects called for were well known and easily found at and before their respective dates; and that said entries possessed all the requisites of valid locations under the land law. They also charge that said surveys and patents are in strict conformity to the special calls of said entries; that, having so acquired their title and interest under the deed of the patentee, they had well hoped to have enjoyed their lands so conveyed; but they charge that a certain McKee made the following vague and void locations, to wit: copies whereof are herewith filed, and prayed to be taken as a part of this bill; and, having surveyed said locations contrary to their calls and to law, and so as to interfere with your orators' location, hath obtained an elder grant or grants than that of your orators, and has, by deed or otherwise, conveyed the same to a certain Samuel Todd, a citizen of the State of Kentucky, who is now in possession of the land, and refuses to permit your orator to have possession of the same, although repeatedly applied to for the purpose; also refuses to convey his legal title, so fraudulently obtained, to your orators, or either of them. Your orators further charge that a certain Robert Clarke, a citizen of the State of Kentucky, on the day of , made the following vague and void location, to wit: and hath obtained a grant thereon of elder date than that of your orators. Your orators further state that a certain John May made the following vague and void locations, to wit:

and, after having the same surveyed contrary to location, and so as to interfere with your orators' special entry: a patent of elder date hath also issued to Hill and Daniel, of elder date than that of your orators, and the title and possession thereof is vested in a certain William Moreland, Abram Hite, Daniel Trout, and Jeremiah Trout, citizens of the State of Kentucky, and who are also made defendants to this bill.

Your orators further charge, that, on the day of , Christopher Clarke made the following vague and void location, to wit: and, having surveyed it contrary to law, a patent of elder date than that of your orator hath issued thereon; which patent also encludes a part of your orators' special location, and, having so obtained a patent, hath so sold or conveyed the same as to vest the legal title in a certain , a citizen of the State of Kentucky, and who is also made defendant to this bill, and who is also in possession of the same, and refuses to convey or render possession to your orator. Your orator further states that John May also made the following vague and void location, to wit: and afterwards made the following amendment thereto, to wit: copies of which are herewith filed, and prayed to be taken as a part of this bill; that, notwithstanding said amendment is vague and void for uncertainty, and surveyed contrary to law, and is also of younger date than that of your orators, the said May hath obtained a patent thereon of elder date than that of your orators, and so as to interfere with their special location; the legal title to which is vested in a certain John Taylor, a citizen of the State of Kentucky, who is likewise made defendant to this bill, and who also refuses to convey the title to said land to your orators. In tender consideration, and for as much as your orators are without remedy at law, and only relievable in equity, may it please your honors to grant to your orators the United States' writ of subpœna, by which the defendants, and each of them, by their several and respective oaths, may full, true, and perfect answer make to all and singular the allegations contained in this bill, in as full and perfect a manner as if the same were repeated in the form of interrogatory; but, more especially, that they may say if the allegations of this bill are not true; does not their surveys and patents interfere with that of your orators; under what title do they and each of them claim; set forth particularly, and file their title papers, and, by a decree of your honors, may the defendants be decreed to convey, respectively, to your orators their respective claims, and to render possession of the land so unjustly withheld from them, and to grant to your orators such other and further relief as to equity shall belong; and *he* will ever pray, &c.

WICKLIFFE.

The following are the exhibits referred to in the foregoing bill, so far as the same are filed among the papers in the cause, to wit:

Voss's entry of 10,000 *acres.*

October 11, 1783. Edward Voss enters 10,000 acres by virtue of two treasury warrants, No. 8,991 and 8,990, beginning at the northwest corner of Patton's 8,400 acre survey; thence, with Allen's line, westwardly, to the river; thence, up the river, and along Roberts's line on the east for quantity.

A copy. Teste, JNO. M. FOSTER, *R. L. Off.*

Voss's entry of 5,000 *acres.*

October 11, 1783. Edward Voss enters 5,000 acres by virtue of a treasury warrant, No. 8,989, beginning at the southwest corner of Patton's 8,400 acre survey; then westwardly, with Patton, Pope, and Thomas's survey; then up the river, and on Patton's line on the east for quantity.

A copy. Teste, JNO. M. FOSTER, *R. L. Off.*

Patton's entry of 8,400 *acres.*

26th December, 1782. James Patton enters 8,400 acres upon a treasury warrant, No. 12,311, about two miles up the first branch, above the Eighteen Mile creek, beginning at a tree marked J. P., and to run north five miles, then to extend off at right angles eastwardly for quantity.

Roberts's entry of 10,000 *acres.*

26th December, 1782. John Roberts enters 10,000 acres upon a treasury warrant, No. 14,224, beginning at the upper corner, next to the river, of James Patton's entry of 8,400 acres, and to run parallel with the river 6 miles, then of at right angles eastwardly for quantity.

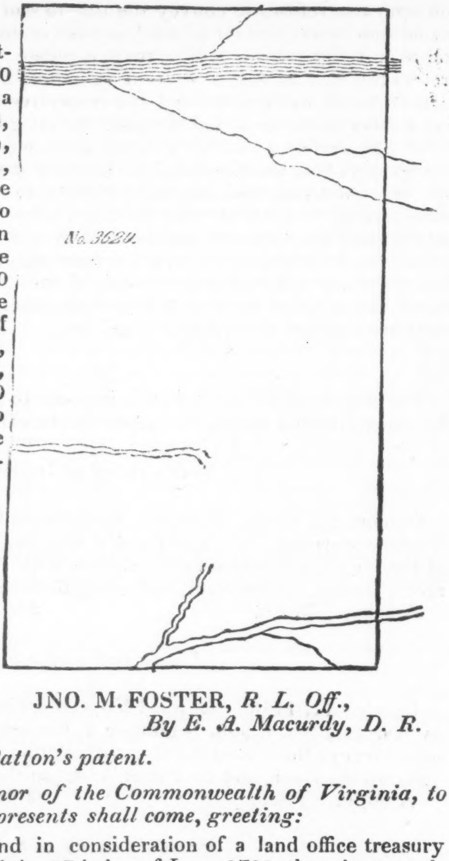
Copies. Teste, JNO. M. FOSTER, *R. L. Off.*,

By E. A. Macurdy, D. R.

Patton's survey.

Surveyed for James Patton, in Jefferson county, 8,400 acres of land, by virtue of a treasury warrant, No. 1,224, beginning at a mulberry, elm, and sugar tree, marked I. P., standing on the bank of the first large creek running into the Ohio above the Eighteen Mile creek, two miles up the said creek; thence north, 1,600 poles, cornering at a sugar tree and two ashes, on the top of a hill; thence east, 840 poles, to a walnut, poplar, and beech, on a ridge; thence south, 1,600 poles, to a sugar tree and two hickories, on a ridge; thence west, 840 poles, to the beginning.

WILLIAM ROBERTS.
GEO. MAY, *S. J. C.*
September 20, 1783.



A copy. Teste, JNO. M. FOSTER, *R. L. Off.*,
By E. A. Macurdy, D. R.

Patton's patent.

Patrick Henry, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

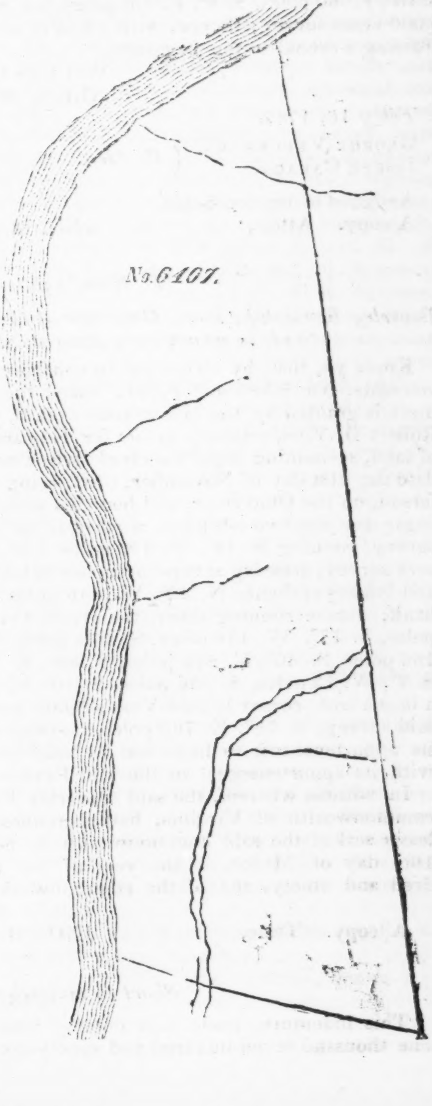
Know ye, that, by virtue and in consideration of a land office treasury warrant, No. 12,311, and issued the 17th day of June, 1782, there is granted, by the said commonwealth, unto James Patton a certain tract or parcel of land, containing eight thousand four hundred acres, by survey bearing date the 20th day of September, 1783, lying and being in the county of Jefferson, and bounded as followeth, to wit: beginning at a mulberry, elm, and sugar-tree, marked J. P., standing on the bank of the first large creek, two miles up the said creek, north, 1,600 poles, cornering at a sugar tree and two ashes, on the top of a hill; thence east, 840 poles, to a walnut, poplar, and beech, on a ridge; thence south, 1,600 poles, to a sugar tree and two hickories, on a ridge; thence west, 840 poles, to the beginning, with its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances, to the said James Patton and his heirs for ever.

In witness whereof, the said Patrick Henry, esq., Governor of the commonwealth of Virginia, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed at Richmond, on the twentieth day of September, in the year of our Lord, one thousand seven hundred and eighty-six, and of the commonwealth the eleventh.

P. HENRY.

A copy. Teste,

JNO. M. FOSTER, *R. L. Off.*



Allen's entry of 1,000 *acres.*

October 11, 1783. James Allen enters 1,000 acres, part of a treasury warrant, No. 14,198, beginning at the northwest corner of Patton's 8,400 acres survey, and running with his line S. 250 poles; thence down the creek, on both sides, westwardly for quantity, to be laid off in one or more survey.

A copy. Teste,
JNO. M. FOSTER,
R. L. Off.
By E. A. Macurdy, D. R.

Roberts's entry of 10,000 *acres.*

December 26, 1782. John Roberts enters 10,000 acres upon a treasury warrant, No. 14,224, beginning at the upper corner, next the river, of James Patton's entry of 8,400 acres, and to run parallel with the river 6 miles, then off at right angles, eastwardly, for quantity.

A copy. Teste,
JNO. M. FOSTER,
R. L. Off.
By E. A. Macurdy, D. R.

Voss's survey.

Surveyed for Edward Voss 8,500 acres of land, on two treasury warrants, No. 8,990 and 8,991, lying in Jefferson county, on the Ohio river, beginning at a sugar tree and two ash trees, N. W. corner to James Patton's 8,400 acre survey, running N. 14°, W. 192 poles, with a line of John Roberts's 10,000 acre survey, crossing several branches, to his corner, a white walnut, poplar, and buckeye; thence N. 22°, W. 646 poles, to two beech trees on the river bank; thence running down the river, binding thereon, S. 45°, W. 498 poles, S. 17°, W 178 poles, S. 270 poles, S. 11°, E 58 poles, S. 29°, E. 166 poles, S. 40°, E. 212 poles, S. 30°, E. 91 poles, S. 12°, E. 162 poles, S. 7°, W. 12 poles, S. 456 poles, S. 10°, E. 60 poles, S. 6°, E. 352 poles, to a beech tree, corner to said Voss's 5,000 acres survey; thence, with a line of said survey, S. 76°, E. 763 poles, crossing a creek, to the beginning.

WILLIAM ROBERTS, *D. S.*
ALEX. BRECKENRIDGE, *S. J. C.*

Feb'y 16, 1789.

GEORGE VENCHENER, } *C. Men.*
JOSEPH CABAGE. }

Assigned to Peyton Short.
A copy. Attest, JNO. M. FOSTER, *R. L. O.*
By E. A. Macurdy, D. R.

P. Short's patent.

Beverley Randolph, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that, by virtue and in consideration of two land office treasury warrants, No. 8,990 and 8,991, issued the 21st day of November, 1781, there is granted by the said commonwealth unto Peyton Short, assignee of Robert B. Voss, attorney in fact for Edward Voss, a certain tract or parcel of land, containing eight thousand five hundred acres, by survey bearing date the 21st day of November, 1781, lying and being in the county of Jefferson, on the Ohio river, and bounded as followeth, to wit: beginning at a sugar tree and two ash trees, northwest corner to James Patton's 8,400 acre survey, running N. 14°, W. 192 poles, with a line of John Roberts's 10,000 acre survey, crossing several branches to his corner, a white walnut, poplar, and buckeye; thence N. 22°, W. 646 poles, to two beech trees on the river bank; thence running down the river, binding thereon, S. 45°, W. 498 poles, S. 17°, W. 178 poles, S. 270 poles, S. 11°, E. 58 poles, S. 29°, E. 166 poles, S. 40°, E. 212 poles, S. 30°, E. 91 poles, S. 12°, E. 162 poles, S. 7°, W. 12 poles, S. 456 poles, S. 10°, E. 60 poles, S. 6°, E. 352 poles, to a beech tree, corner to said Voss's 5,000 acre survey; thence, with a line of said survey, S. 76°, E. 763 poles, crossing a creek, to the beginning, with its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances, to the said Peyton Short and his heirs, for ever.

In witness whereof, the said Beverley Randolph, esq., Governor of the commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed at Richmond, on the 16th day of March, in the year of our Lord one thousand seven hundred and ninety, and of the commonwealth the 14th.

BEVERLEY RANDOLPH.

A copy. Teste, JNO. M. FOSTER, *R. L. O.*
By E. A. Macurdy, D. R.

Short to Holmes—deed.

This indenture, made and entered into this tenth day of December, one thousand seven hundred and ninety-six, between Peyton Short, of the county of Woodford, and State of Kentucky, of the one part, and John Holmes, of the town of Baltimore, State of Maryland, of the other part, witnesseth: that, for and in consideration of the sum of two thousand eight hundred dollars, to him in hand paid, the receipt whereof he doth by these presents acknowledge, the said Peyton hath given, granted, bargained, and sold, and doth hereby give, grant, bargain, and sell, to the said John, two certain tracts or parcels of land, lying and being in the county of Jefferson, and State of Kentucky; the one containing eight thousand five hundred acres, the other five thousand acres; which said tracts of land are bounded as followeth, to wit: The eight thousand five hundred acres beginning at a sugar tree and two elm trees, northwest corner to James Patton's eight thousand four hundred acre survey, running N. 14°, W. 1,920 poles, with a line of John Roberts's survey of 10,000 acres, crossing several branches, to his corner, a white walnut, poplar, and buckeye; thence north 22°, west 646 poles, to two beech trees on the river bank; thence running down the river, binding thereon, S. 45°, W. 98 poles, S. 17°, W. 178 poles, S. 270 poles, S. 11°, E. 58 poles, S. 29°, E. 166 poles, S. 40°, E. 212 poles, S. 30°, E. 91 poles, S. 12°, E. 162 poles, S. 7°, W. 12 poles, S. 456 poles, S. 10°, E. 60 poles, S. 6°, E. 352 poles, to a beech tree, corner to the 5,000 acre tract aforesaid; thence, with a line of said survey, S. 76°, E. 736 poles, crossing a creek, to the beginning. The other tract of five thousand acres aforesaid, beginning at a mulberry, elm, and sugar tree, on the bank of Patton's creek, the southwest corner of James Patton's eight thousand four hundred acre survey, and running thence, with said Patton's line, north 1,600 poles, crossing two creeks, to a sugar tree and two ash trees, N. 76°, W. 765 poles, crossing a creek, to a beech tree on the river bank; thence down the river, binding thereon, S. 6°, E. 24 poles, S. 10°, E. 74 poles, S. 19°, E. 100 poles, S. 27°, E. 102 poles, S. 32°, E. 326 poles, S. 27°, E. 92 poles, S. 23°, E. 134 poles, S. 13°, E. 110 poles, S. 5°, E. 208 poles, S. 3°, W. 174 poles, S. 10°, W. 84 poles, S. 28°, W. 120 poles, S. 36°, W. 70 poles, S. 43°, W. 210 poles, to an ash, locust, and buckeye, corner to James Patton, Benjamin Pope, and Mark Thomas's 853 acre survey; thence, with their line, S. 80°, E. 650 poles, to the beginning: to have and to hold the aforesaid tracts or parcels of land to him, the said John Holmes, and his heirs for ever; and the said Peyton doth by these presents warrant and defend the same to him, the said John, and his heirs, against the claim or claims of him the said Peyton Short, and all others holding under him; and the said Peyton doth furthermore agree with the said John, to warrant and defend against all persons whatsoever, so much of aforesaid tract of land as shall, on the final adjustment of interfering claims, be equal in value to the aforesaid two thousand seven hundred dollars, together with the interest of six per cent. thereon from the 19th day of November, 1795, as well as all reasonable costs and damages to which the said John may be subjected in ascertaining the interferences aforesaid.

In witness whereof, the said Peyton hath hereunto set his hand and affixed his seal, the day and year first above mentioned.

PEYTON SHORT, [SEAL.]

Sealed and delivered in presence of
J. RUSSELL,
FRANS. JONES,
WILL. MORTON.

Morton's deposition.

The deposition of William Morton, taken at the office of Joseph Breckenridge, in the town of Lexington, on the first day of March, 1816, taken by consent of parties, to be read in chief in two suits depending in the circuit court of the United States for the district of Kentucky; one wherein John Holmes, and others, are complainants in chancery, and the heirs of John Breckenridge, &c., are defendants; and the other an action of ejectment, wherein John Holmes, &c., are plaintiffs, and the said Joseph C. Breckenridge, &c., *is* defendant, who, being first duly sworn, deposeth and saith, being shown a paper purporting to be a deed from Peyton Short to John Holmes, to which his name and that of Francis Jones and James Russell are affixed as subscribing witnesses, and bearing date the 10th day of December, 1796, saith that the signature Will. Morton is his own proper signature, and that he verily believes the J. Russell is the signature of James Russell, deceased, late of this place, who was an attorney at law; and that the signature Frans Jones, is the signature of Francis Jones deceased, late of the county of Fayette. He further saith, that the deed and the signature Peyton Short is, as he believes, the proper handwriting of the said Short. The name Peyton Short now appears now to be scratched across with a pen. Question by the complainants. Were you not employed by Short, the grantor, to transact the sale of the land mentioned in this deed with John Holmes, and did you not negotiate the business between Short and Holmes? Answer. I was written to by Mr. Short to endeavor to make the sales for him: I did not do it; but, on being told by John Holmes what was the best he could do with the land, I advised him to sell, and told him I thought Short would be satisfied. The lands I understood were sold; and the papers, or a part of them, between Short and Holmes, in relation to the sales, were sent to me, as I believe, to close the business with Mr. Short, 27th March, 1816. On examination of my letter book, I find a copy of a letter to Mr. John Holmes, under date of January 3d, 1797, on which day I forwarded to him by Mr Hughes, enclosed in said letter, Peyton Short's deed and obligation; which deed I believe the same annexed; and further this deponent saith not.

WILL. MORTON.

Sworn and subscribed to before me, a justice of the peace for the county of Fayette.

JOHN POPE.

Short to Omealy, &c.—deed.

This indenture, made this 21st day of September, one thousand eight hundred and four, between Peyton Short, of the county of Woodford, and State of Kentucky, of the one part, and M. Omealy, trustee for John Holmes, and William Slater and H. Thompson, trustees of Richard Caton, of the State of Maryland, and John Breckenridge, of the county of Fayette, and State of Kentucky, of the other part, witnesseth: that for and in consideration of the sum of two thousand seven hundred dollars to the said Peyton Short in hand paid, the receipt whereof he doth hereby acknowledge, he, the said Short, hath given, granted, bargained, and sold to the said Omealy, Slater, and Thompson, trustees as aforesaid, and to the said Breckenridge, two certain tracts of land, lying in the now county of Henry, and State of Kentucky, on the Ohio river; the one containing eight thousand five hundred acres, the other five thousand acres: the said Omealy, Slater, and Thompson, trustees as aforesaid, to be entitled to, and to hold one equal moiety of said two tracts, and the said Breckenridge the other moiety; which said two tracts are bounded as follows, to wit: The eight thousand five hundred acres beginning at a sugar tree and two elm trees, northwest corner to James Patton's eight thousand four hundred acre survey, running N. 14°, W. 1,920 poles, with a line of John Roberts's survey of 10,000 acres, crossing several branches, to his corner, a white walnut, poplar, and buckeye; thence north 22°, W. 646 poles, to two beech trees, on the bank of the Ohio river; thence running down the river, and binding thereon, S. 45°, W. 498 poles, S. 17°, W. 178 poles, S. 270 poles, S. 11°, E. 58 poles, S. 29°, E. 166 poles, S. 40°, E. 212 poles, S. 30°, E. 91 poles, S. 12°, E. 162 poles, S. 7°, W. 12 poles, S. 456 poles, S. 10°, E. 60 poles, S. 6°, 352 poles, to a beech tree, corner to the 5,000 acre tract aforesaid; thence, with a line of the same, S. 76°, E. 763 poles, crossing a creek to the beginning; which said tract of eight thousand five hundred acres was granted by the commonwealth of Virginia to the said Peyton Short, as assignee of Robert B. Voss, attorney in fact for Edward Voss, by patent bearing date at Richmond the 16th day of March, in the year one thousand seven hundred and ninety. The other tract of five thousand acres aforesaid, was also granted by the commonwealth of Virginia to the said Peyton Short, as assignee of Robert B. Voss, attorney in fact for Edward Voss, by patent bearing date at Richmond the twelfth day of March, 1790, and is bounded as followeth, to wit: beginning at a mulberry, sugar tree, and elm, on the bank of Patton's creek, the southwest corner of James Patton's 8,400 acre survey, and running with said Patton's line north 1,600 poles, across two creeks, to a sugar tree and two ash trees; thence N. 76°, W. 763 poles, crossing a creek, to a beech tree on the bank of the Ohio river; thence running down the river, and binding thereon, S. 6°, E. 24 poles, S. 10°. E. 574 poles, S. 19°, E. 100 poles, S. 27°, E 102 poles, S. 32°, E. 326 poles, S. 27°, E. 92 poles, S. 23°, E. 134 poles, S. 13° E. 110 poles, S. 5°, E. 208 poles, S. 3°, W. 174 poles, S. 10°, W. 84 poles, S. 28°, W. 120 poles, S. 36°, W. 70 poles, S. 43°, W. 210 poles, to an ash, locust, and buckeye, corner to James Patton, Benj. Pope, and Mark Thomas's survey of 853 acres; thence, with a line thereof, S. 80°, E. 630 poles, to the beginning: to have and to hold the aforesaid two tracts or parcels of land, to them, the said Omealy, William Slater, and H. Thompson, trustees as aforesaid, and the said John Breckenridge, in the aforesaid proportion, to wit: the said Omealy, Slater, and Thompson, one equal moiety, and the said Breckenridge the remaining moiety, to them and their heirs and assigns, for ever; and the said Peyton Short doth by these presents warrant and defend the said two tracts of land, with their appurtenances, to the said Omealy, Slater, Thompson, and Breckenridge, in the proportion aforesaid, against the claim of him, the said Peyton Short, and all others claiming under him; and the said Peyton Short doth furthermore agree with the said Omealy, Slater, Thompson, and Breckenridge, to warrant and defend against all persons whatsoever, so much of the aforesaid tract of land as shall, on the final adjustment of all the claims interfering therewith, be equal in value to the aforesaid two thousand seven hundred dollars, together with the interest of six per centum thereon, from the 19th day of November, 1795, as well as all reasonable costs and damages to which the said Omealy. Slater, Thompson, and Breckenridge, may be subjected in ascertaining the interferences aforesaid.

In witness whereof, the said Peyton Short hath hereunto set his hand and affixed his seal, the day and year first above written.

[SEAL.] PEYTON SHORT.

Signed, sealed, and delivered, in presence of
THOMAS PRATHER,
ROBERT WHITE,
JAMES MITCHUM.

STATE OF KENTUCKY, sct.

I, Achilles Sneed, clerk of the court of appeals for the State aforesaid, being duly authorized by law to receive, admit, and record deeds and other writings in my office, do hereby certify that the foregoing deed was produced to me in my office in Frankfort, on the 12th day of November, 1804, and acknowledged by Peyton Short, the grantor therein named, to be his act and deed, and that the same is truly recorded.

In testimony whereof, I have hereunto subscribed my name, the day and year aforesaid.

ACHILLES SNEED, *C. C. A.*

McGee's patent.

Patrick Henry, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that, by virtue and in consideration of a pre-emption treasury warrant, No. 278, and issued the 22d day of March, 1780, there is granted by the said commonwealth unto William McGee a certain tract or parcel of land, containing one thousand acres, by survey bearing date the 6th day of September, 1783, lying and being in the county of Fayette, on Cooper's run, adjoining his settlement, and bounded as followeth: beginning at a hickory and honey locust, corner to said settlement; thence S. 60°, W. 400 poles, with said line, to a sugar tree, buckeye, and hoop ash; thence S. 30°, E. 400 poles, crossing a fork of Cooper's run, and a small branch, 192 poles, and East fork, 280 poles, to two ashes and small elm; thence N. 60, E. 400 poles, crossing three branches, to two honey locusts and hoop ash; thence N. 30°, W 400 poles, to the beginning, with its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances, to the said William McGee and his heirs, for ever.

In testimony whereof, the said Patrick Henry, esq., Governor of the commonwealth of Virginia, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed at Richmond, on the 20th day of August, in the year of our Lord, one thousand seven hundred and eighty-six, and of the commonwealth the eleventh.

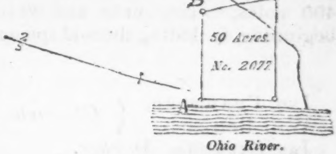
P. HENRY.

A copy. Teste, JNO. M. FOSTER, *R. L. Off.*

Clarke's survey.

JEFFERSON, sct.

December 13, 1783. Surveyed for Robert Clarke on a military warrant. No. 170, 50acres of land, lying on the Ohio, and adjoining a tract of 600 acres of Daniels and Hite's, as assignees of John May, beginning at two sugar trees on Ohio river, corner to the said Daniel and Hite's 600 acres tract, on the lower side; thence along their line N. 79°, E. 90 poles, to a beech and sugar tree in the same line; thence S. 40°, E., crossing a branch, 90 poles, to a beech on the side of a ridge; thence S. 79°, W., re-crossing said branch, 106 poles, to the river, to a mulberry and buckeye on the bank; thence up the winding of the river, N. 30°, W. 45 poles; thence N. 40° 50 poles, to the beginning.

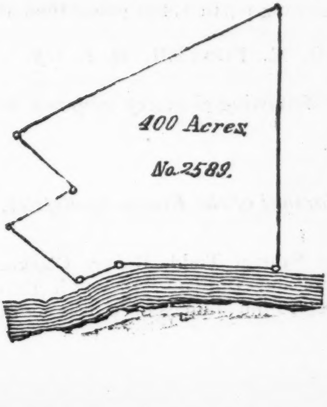


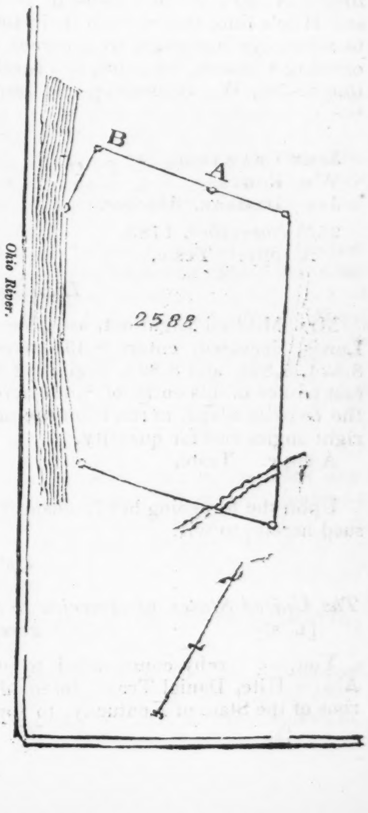
W. DANIEL, *D. S.*
GEORGE MAY, *S. J. C.*

John Crawford, } *C. C.*
William Rogers, }
James Gilmore, *Marker.*

Daniel, &c.'s, survey.

Surveyed for Walker Daniel and Isaac Hite and Company, assignee of John May, 600 acres of land, one hundred of which is on military warrant No. 891, the other 500 acres on a T. warrant, No 4,924, lying on the Ohio river, about 18 miles below the mouth of Kentucky, beginning 70 yards S., 11 E. from the Big Spring, where Capt. Dougherty encamped, at a sugar tree; thence S. 79, W. 160 poles, to the Ohio; thence down the same, following its meanders, S. 11°, E. 78 poles; thence S. 29, E. 166 poles; thence S. 40°, E. 162 poles, to two sugar trees; thence leaving the river, north 79,





E. 240 poles, to a beech, buckeye, and hackberry; thence N. 31°, W. 400 poles, to two lynns and white ash; thence S. 79°, W. 90poles, to the beginning, including the said spring. December 12, 1783.

W. DANIEL, *Deputy Surveyor.*
GEGRGE MAY, *S. J. C.*

JNO. CRAWFORD, } *Ch. men.*
WM. ROGERS, }
JAS. GILMORE, *Marker.*
A copy. Teste, JNO. M. FOSTER, *R. L. Off.*

Clarke's survey.

JEFFERSON, sct.

December 13, 1783. Surveyed for Christopher Clarke 400 acres of land, on a treasury warrant, No. 6,957, lying on the Ohio, adjoining and below John May's entries, for 600 acres, about eighteen miles below the mouth of Kentucky, beginning on Ohio, at a mulberry and buckeye, corner to Roberts's 50 acre survey; thence S. 30°, E. 46 poles, continuing down the river; thence S. 12°, E. 162 poles; thence S. 7°, W. 12 poles, to a buckeye and elm; thence N. 79°, E., leaving the river, 325 poles, to an elm and buckeye; thence N. 40°, W. 330 poles, to two buckeyes and black walnut, in Daniel and Hite's line; thence with their line 120 poles, in the course S. 79°, W. to a buckeye and sugar tree, corner to Robert Clarke; thence S. 40°, E., crossing a branch, 90 poles, to a beech on the side of a hill; thence with his line S. 79°, W., re-crossing said branch, 106 poles, to the beginning.

W. DANIEL, *Dep. Sur.*
GEO. MAY, *S. J. C.*

JOHN CRAWFORD, } *C. C.*
WM. ROGERS, }
JAS. GILMORE, *Marker.*
25th November, 1783.
A copy. Teste, JNO. M. FOSTER, *R. L. Off.*

Lightfoot's entry.

Mrs. Mildred Lightfoot, assignee of John Lewis, executor of Fielding Lewis, deceased, enters 9,431 acres, upon three treasury warrants, Nos. 8,824, 8,828, and 8,823, beginning 5 miles east from James Patton's south-east corner of his entry of 8,400 acres, that begins about two miles above the 18 Mile island, to run from the said beginning north 1,400 poles, then at right angles east for quantity.

A copy. Teste, JNO. M. FOSTER, *R. L. Off.*

Upon the foregoing bill in chancery, the following chancery subpœna issued herein, to wit:

Ch'y spa.

The United States of America to the Marshal of the Kentucky district, greeting:
[L. S.]

You are hereby commanded to summon Samuel Todd, Robert Clarke, Abram Hite, Daniel Trout, Jeremiah Trout, and William Moreland, citizens of the State of Kentucky, to appear before the Judges of our seventh circuit court of the United States in and for the Kentucky district, at the Capitol. in Frankfort, on the 24th day of our present November term, to answer a bill in chancery, exhibited against them by John Holmes, Michael Omealy, Richard Caton, Hugh Thompson, and William Slater, citizens of the State of Maryland; and this they shall in no wise omit, under the penalty of four hundred dollars each.

In testimony whereof, John Marshall, esq., Chief Justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 23d day of November, 1815, and of our independence the 40th.

Attest, JNO H. HANNA, *C. C. C. K. D.*

Marshal's return.

1815, November 30, executed on Todd: December 1, executed on D. and J. Trout: not time to execute on others.

JAS. CLARKE, *Dy.*,
For Ro. Crocket, M. K. D.

Als. Ch'y spa.

The United States of America to the Marshal of the Kentucky district, greeting:

[L. S]

You are hereby again commanded to summon Samuel Todd, Robert Clarke, Abram Hite, Daniel Trout, Jeremiah Trout, and William Moreland, citizens of the State of Kentucky, to appear before the Judges of our seventh circuit court of the United States in and for the district of Kentucky, at the Capitol, in Frankfort, on the 1st Monday in May next, to answer a bill in chancery exhibited against them by John Holmes, Michael Omealy, Richard Caton, Hugh Thompson, and William Slater, citizens of the State of Maryland; and this they shall in no wise omit, under the penalty of four hundred dollars each, and have then there this writ.

In testimony whereof, John Marshall, esq., Chief Justice of the United States, hath caused the seal of our said court to be hereunto affixed this 14th day of December, 1815, and of our independence the 40th.

Attest, JNO. H. HANNA, *C. C. C. K. D.*

Memo.—This spa. is not to be executed on the within named defendants, Samuel Todd, Daniel Trout, and Jeremiah Trout, as a former has been.

Attest, JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return.

Executed on March the 25th, 1816, upon Abram Hite: on the 29th day of the same month upon William Moreland: Robert Clarke not found.

GRANVILLE LEWIS, *D.*,
For Rob. Crocket, M. K D.

Als. ch'y spa.

The United States of America to the Marshal of the Kentucky district, greeting:

[L. S.]

You are hereby again commanded to summon Robert Clarke, a citizen of the State of Kentucky, to appear before the Judges of our 7th circuit court of the United States in and for the Kentucky district, at the Capitol, in

Frankfort, on the 2d Monday in October next, to answer a bill in chancery exhibited against him, &c., by John Holmes, Michael Omealy, Richard Caton, Hugh Thompson, and William Slater, citizens of the State of Maryland; and this shall in no wise omit, under the penalty of four hundred dollars, and have then there this writ.

In testimony whereof, John Marshall, esq., Chief Justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 10th day of June, 1824, and of our independence the 48th.

Att. JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return.

Executed 5th August, 1824.

JAMES COLEMAN, jr., *D.*,
For Chapman Coleman, M. K.

At the November term of the court aforesaid, in the year 1815, on
Amended bill motion of the complainants, by their counsel, leave is given
filed. them to amend their bill, and make George R. C. Floyd and David Floyd, defendants, which is filed accordingly.

Amended bill.

Your orators also show that a certain George R. C. Floyd and David Floyd, under certain vague and void location, in the words and figures following, claim a part of the land included in the special location of your orators, under a grant or grants of elder date than that of your orators. Your orators therefore pray process against them, and such decree as the nature of their case may require, &c.

WICKLIFFE.

And afterwards, to wit, at the November term of the court aforesaid, in 1822, (until which time this cause was continued on the rule docket,) came
Amended bill the complainants aforesaid by their counsel, and, on his mo-
filed. tion, it is ordered that they have leave to file an amended bill herein, making John Howard a defendant; which is done accordingly.

Amended bill.

To the honorable the Judges of the Circuit Court of the United States for the district of Kentucky:

Your orators, John Holmes and others, complainants, against Samuel Todd and others, by way of amendment and supplement to their bill heretofore filed, they beg leave to state that they are informed and believe, and so charge the fact to be, that a certain John Howard, a citizen of the State of Kentucky, made a vague and void location, with the proper surveyor, for the quantity of 7,945½ acres of land, or thereabouts, in the words and figures following, to wit:

an official of which entry is herewith filed, and made a part of this bill; and has so surveyed his said location as to interfere with the special location of your orators, by surveying the same contrary to location, and so as to include a large surplus of land, and has obtained, on such illegal survey, a patent elder in date than that of your orators; and, although repeatedly applied to for the purpose, refuses to convey the same to your orators. Your orator prays process against the said Howard, that he answer this and the original bill, and, upon the final hearing, the proper decree be entered for your orators, &c.

R. WICKLIFFE.

Upon which amended bill, the following chancery spa. issued, to wit:

Ch'y spa. on amended bill.

The United States of America to the Marshal of the Kentucky district,
[L. S.] *greeting:*

You are hereby commanded to summon John Howard, a citizen of the State of Kentucky, to appear before the Judges of our seventh circuit court of the United States in and for the Kentucky district, at the Capitol, in Frankfort, on the first Monday in January next, to answer an original and amended bill in chancery, exhibited against him, and others, by John Holmes, Michael Omealy, Richard Caton, Hugh Thompson, and William Slater, citizens of the State of Maryland; and this he shall in no wise omit, under the penalty of four hundred dollars, and have then this writ.

In testimony whereof, John Marshall, esq., Chief Justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 7th day of November, 1822, and of our independence the 47th.

Attest, JNO. H. HANNA, *C. C. C. K. D.*

Marshal's Return.

Executed on John Howard, of Fayette county, 30th November, 1822.
JAMES COLEMAN, Jr., *D. for*
JOHN T. MASON, *M. K. D.*

And afterwards, to wit, at the November term of the court aforesaid, in the year 1822, (until which time this cause was continued on the rule docket,) on motion of the complainants, by their counsel, leave is granted them to take the depositions of Joseph Sanders, Lewis Field, and —— McCarty, before any two justices of the peace, notary public, or mayor of any city.

Order for complainants to take deposition.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid, to wit, the November term, 1822, it is ordered that Daniel Farley do go on the land in controversy between the parties, on the day of next, if fair, if not, then on the next fair day, and then and there lay off and survey the same as either party may direct, having due regard to all deeds and other evidence that may be produced; report all matters of fact specially; and return one fair plat and certificate thereof into the clerk's office of this court, thirty days at least before the day of trial; and the marshal, or one of his deputies, is directed to attend the said surveyor, to remove force should any be offered.

Order of survey.

Discontinued as to Todd & D. Floyd.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1823, (until which time this cause was continued on the rule docket,) came the complainants aforesaid, by *his* counsel; and, on his motion, it is ordered that this suit be discontinued as to the defendants, Samuel Todd and David Floyd.

Order for depositions.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1824, (until which time this cause was continued upon the rule docket,) on motion of the complainants, by their counsel, leave is given them to take depositions, generally, in or out of this district, upon the interrogatories filed, before any one justice of the peace, notary public, or mayor of any city.

Order of survey.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1824, (until which time this cause was continued on the rule docket,) on motion of the complainants' counsel, it is ordered that Daniel Farley do go on the land in controversy, on the day of next if fair, if not, on the next fair day, and then and there survey and lay off the same as either party may direct, having due regard to all deeds and other evidence that may be produced; report all matters of fact specially; and return one fair plat and certificate thereof into the clerk's office of the court aforesaid, 30 days at least before the day of trial; and the marshal, or one of his deputies, is directed to attend the said surveyor, to remove force should any be offered.

Rule for answers.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of June, and year 1825, (until which time this cause was regularly continued on the rule docket,) came the complainants, by their counsel, and gave the defendants a rule to file their answers herein.

Bill for confessed.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of July, and year 1825, (until which time this cause was continued on the rule docket,) came again the complainants, by their counsel, and the defendants Daniel Trout, William Moreland, Robert Clarke, and John Howard, having failed to answer the complainants' bill herein, although ruled so to do, it is, on motion of the said complainants, by their counsel, ruled, that the said bill be taken for confessed against the said defendants Daniel Trout, William Moreland, Robert Clarke, and John Howard.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of August, and year 1825, (until which time this cause was continued on the rule docket,) came the said complainants, by their counsel, and set this cause for hearing as to the defendants Daniel Trout, William Moreland, Robert Clarke, and John Howard.

Decree nisi.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1826 (until which time this cause was continued,) it appearing to the court that John Holmes and William Slater have departed this life; it is ordered that this suit, as to them, abate, and that the same stand and remain in the names of their trustees respectively, the said Omealey and Hugh Thompson, and the said Richard Caton; and the said defendants Howard, Trout, and Moreland and Clarke, still failing to appear and answer the complainants' bill, and it appearing to the court that the complainants have regularly taken their bill for confessed against them in the clerk's office, and the cause coming on to be heard on the bill so taken for confessed, it is decreed and ordered that, unless the said defendants respectively, show good cause to the contrary, on the sixth day of the next term of this court, that they, the said defendants, do convey to the complainants all their right, title, and interest, respectively, in and to the lands in contest, within the bounds of the patents referred to in the bill which issued to Peyton Short, assignee of Voss, founded upon the two entries—the one of 10,000 acres, and the other of 5,000 acres, referred to in the complainants' bill; and it is further ordered that the marshal, forthwith, serve the defendants, respectively, with a copy of this *bill*, to enable this court to enter a final decree herein.

The following is the marshal's return on a copy of the foregoing decree, to wit:

Return.

I delivered a true copy hereof to the within named Daniel Trout and William Moreland, on the 30th day of May, 1826

J. C COLEMAN, *D. M for*
C. COLEMAN, *M. D. K.*

I delivered a true copy hereof to John Howard the 15th, and to Robert Clarke 17th May, 1826.

N. LOUGHERY, *D. M. for*
C. COLEMAN, *M. D. K.*

And afterwards, to wit, at the November term of the court aforesaid, in the year 1826, (until which time this cause was continued.) In this cause, by consent, this cause is abated as to the defendants Morelands and Daniel Trout, and revived in the names of Daniel Trout, Jeremiah Trout, Jacob Peck, and William Buchannon, as representatives of said Trout; and Walter A. Moreland, John Moreland, and William Moreland, the children and representatives of William Moreland, deceased; and it is further considered and agreed that the decree nisi be set aside and rescinded as to said Moreland and Trout, deceased; and that the answers of the said representatives may be now filed, which is done accordingly; and it is further agreed that this suit shall stand for trial upon replication to the said answers, without the form of entering, and be heard upon the bill, answers, and depositions, &c., without being remanded to the rules.

Abated and revived, &c.

D. Trout's answer.

To the honorable the Circuit Court of the United States of America for the Kentucky District, in Chancery sitting:

The separate answer of Daniel Trout to a bill filed in said court against him and others, by John Holmes and others This respondent, saving, &c. for to so much of said bill as is material for him to answer, saith, that it may be true the entries and surveys of said Voss, in complainants' bill set forth, may have been made at the time mentioned, and in the proper office; and that they were surveyed and assigned, and grants issued thereon, and conveyed to complainants as stated in their bill; but, of all this, he is ignorant, and cannot confess or deny the same, but requires full proof thereof. This defendant is also ignorant of the goodness of said entries, but is advised, and therefore believes, that they are not valid but void, by the laws relating thereto and testing their validity; and, also, that they are surveyed contrary to law and their locative calls. He admits that John May made the two locations in the bill mentioned, but denies that they are either vague or void, but avers they are good special entries, and surveyed according to law and their special calls; and that a grant did issue, on the day of February, 1786, to Isaac Hite, for himself, one-half, and also to him the other half, in trust, for the heirs of Walker Daniel; and that the legal title was regularly conveyed to this respondent's father in his life time, and by him, on the day of 182 , conveyed about 165 acres out the said 600 acre tract to this defendant, by metes and bounds; which deed is duly recorded as the law directs. This respondent says that all the conveyances from the patentee down, and regular chain of title, can be shown, if required by the court, but deems the expense and trouble unnecessary, as complainants have in their bill admitted the elder legal title to have been in his father, Daniel Trout, sen. This respondent does not admit that either of the entries claimed by complainants to be good or valid; but if he is mistaken in this, he believes that neither of them interferes with the land owned and possessed by this respondent. He says it may be true that the boundary of the grant which issued on part of the 10,000 acre entry, may include all this respondent's land; but he believes that the quantity called for in said grant, to wit—8,500, if laid off from the beginning of the said entry, and run according to its calls, would not interfere with this respondent's land at all, but that complainant would have his full quantity before he arrived to his claim; wherefore, he relies on his elder legal title, the vagueness of complainants' entries, or, if good, and surveyed correctly, would not touch the ground occupied and owned by this respondent. And now, having answered all the allegations of said bill, he denies all fraud, &c.; and prays to be hence dismissed, with his costs in this behalf expended: and he, in duty bound, will ever pray, &c.

S. TODD,
Counsel for D. Trout.

KENTUCKY, GALLATIN COUNTY, sct.

This day, Daniel Trout personally appeared before me, and made oath that the matters and things stated in the annexed answers, are the truth, the whole truth, and nothing but the truth, according to the best of his belief and knowledge.

Given under my hand and seal, as one of the justices of the peace in and for said county, this 17th day of July, 1826.

GEORGE STROTHER, *J. P. G. C.* [SEAL.]

J. Trout's answer.

To the honorable the Circuit Court of the United States for the Kentucky District, in Chancery sitting:

The separate answer of Jeremiah Trout to a bill exhibited against him and others, by John Holmes and others, in said court.

This respondent, saving, &c. for answer, saith, that, as to the entries, surveys, assignments, grants, and conveyances under which complainants claim, and their being made in manner, and at the times and places set forth in complainants' bill, he is altogether ignorant, and can neither admit or deny the same, but requires proof as to these statements and allegations in complainants' bill.

As to the validity of the entries made in the name of Voss, under which complainants claim, this respondent says he is also ignorant; but he is advised, and therefore denies, that they, or either of them, are good or valid entries, or possess the requisites of precision and notoriety of legal entries; neither does he admit, but denies their being surveyed agreeable to law; and their locative calls, he admits, he is within the bounds of the survey made on part of the 10,000 acre entry, but contends that, if said survey had been made for only 8,600 acres, and laid down according to law, it would not have interfered with the land of this respondent. He further answers that the entries of John May, set out in complainants' bill, are good and valid entries, and have been correctly surveyed; and that a grant has issued, the   day of   1786, to Isaac Hite, and the legal title regularly conveyed to 532 acres to this respondent's father, Daniel Trout, and   acres conveyed by him to this respondent by deed of record as the law directs; all which entries, surveys, grants, and conveyances, can be produced if required by the court. This respondent denies all fraud, and prays to be hence dismissed with his costs; and he, in duty bound, will ever pray.

SAM'L TODD,
For Defendant Trout.

STATE OF KENTUCKY, GALLATIN COUNTY, sct.

This day, Jeremiah Trout personally appeared before me, the undersigned, a justice of the peace in and for said county, and made oath that the allegations and statements in the above answer, at the suit of John Holmes and others against him and others, in the circuit court of the United States for the Kentucky district, are true, according to the best of his knowledge and belief.

Given under my hand and seal, this 17th day of August, 1826.

GEORGE STROTHER, *J. P. G. C.* [SEAL.]

Overpeck's answer.

To the honorable the Circuit Court of the United States for the Kentucky District, in Chancery sitting:

The separate answer of John Overpeck to a bill exhibited against him and others, by John Holmes, &c., in said court.

This respondent, saving, &c., for answer saith, that, as to the entries, surveys, assignments, grants, and conveyances, under which complainants claim, being made in manner and at the times and places set forth in their bill, he is altogether ignorant, and can neither admit nor deny the same, but requires full proof as to these statements and allegations in complainants' bill. As to the validity of the entries made by Voss, under which complainants claim, this respondent says he is also ignorant; but he is advised, and therefore denies, that they, or either of them, are good or valid entries, or possess the requisites of precision and notoriety of legal entries; neither does he admit, but denies their being surveyed agreeable to law, and their locative calls. He admits that the survey made on part of the 10,000 acre entry includes the land he owns and lives on, but contends that if said survey had been correctly made for only the quantity of 8,500 acres, it would not have interfered with the land of this respondent. He further states that the entries of John May, set out in complainants' bill, are good and valid entries, and have been legally and correctly surveyed in strict conformity with their special calls, and that a grant regularly issued thereon to Isaac Hite, one to himself, the other in trust for the representatives of Walker Daniel, dated the day of , 1786, and the legal title to 532 acres thereof conveyed to Daniel Trout, deceased, and by him the quantity of - conveyed to this respondent on the day of , by deed duly recorded; all of which said entries, survey, grant, and conveyances, can be produced, if required by the court. This defendant having answered all that concerns, denies all fraud, &c., and prays to be hence dismissed with his costs; and he, in duty bound, will ever pray, &c.

S. TODD,
Counsel for Deft.

STATE OF KENTUCKY, *Gallatin, sct.*

This day John Overpeck personally appeared before me, the undersigned, a justice of the peace in and for said county, and made oath that the matters contained in the annexed answer, are true, to the best of his knowledge and belief. Given under my hand and seal, this 17th day of July, 1826.

GEORGE STROTHER, *J. P. G. C.* [SEAL.]

Buchannon's answer.

To the honorable the Circuit Court of the United States for the Kentucky District, in Chancery sitting:

The separate answer of William Buchannon to a bill exhibited against him, &c, by John Holmes, &c., in said court. This respondent, saving, &c., for answer saith, that, as to the entries, surveys, assignments, grants, and conveyances, under which complainants claim, being made in manner and at the times and places set forth in complainants' bill, he is altogether ignorant, and can neither admit nor deny the same, but requires full proof as to these statements and allegations in complainants' bill. As to the validity of the entries made by Voss, under which complainants claim, this respondent says he is also ignorant; but he is advised, and therefore denies, that they, or either of them, are good or valid entries, or possess the requisites of precision and notoriety of legal entries; neither does he admit, but denies their being surveyed agreeable to law and their locative calls. He admits that the survey made on part of the 10,000 acres entry includes the land he owns and lives on, but contends that if said survey had been correctly made for only the quantity of 8,000 acres, it would not have interfered with the land of this respondent. He further states that the entries of John May, set out in complainants' bill, are good and valid entries, and have been legally and correctly surveyed, and in strict conformity with their special calls, and that a grant regularly issued thereon to Isaac Hite, one half to himself, and the other in trust for the legal representatives of Walker Daniel, bearing date the day of , 1786, and the legal title thereof to 532 acres regularly conveyed to his father-in-law Daniel Trout, deceased; and acres thereof conveyed by the said Daniel Trout to the respondent, bearing date the day of , and recorded as the law directs; all of which said entries, survey, and grants, and conveyances, can be produced, if required by the court. And having now answered all the allegations in said bill material for him to answer, he denies all fraud, &c., and prays to be hence dismissed, with his costs in this behalf most unjustly expended; and he, in duty bound, will ever pray, &c.,

S. TODD,
Counsel for Deft.

STATE OF KENTUCKY, *Gallatin County, sct.*

This day William Buchannon personally appeared before me, the undersigned, a justice of the peace in and for said county, and made oath that the allegations and statements in the above answer, at the suit of John Holmes and others, against him and others, in the circuit court of the United States for the Kentucky district, are true, according to the best of his knowledge and belief. Given under my hand and seal, this 17th day of August, 1826.

GEORGE STROTHER, *J. P. G. C.* [SEAL.]

Moreland's answer.

To the honorable the Circuit Court of the United States for the Kentucky District:

The joint answer of John Moreland, William Moreland, and Walter Moreland, to a bill in chancery exhibited against William Moreland and others, and revived against these defendants, by the trustees of John Holmes, &c. These defendants, saving and reserving to themselves, &c., for answer to said bill saith, that whether the entries under which the complainants pretend to claim ever were made at all or not, or, if made, whether they were made in the proper office or not, are facts which these respondents do not know; they therefore can neither admit nor deny them, but require proof as to the charge in said bill that said entries, more especially the one for 10,000 acres, are special and precise, and the objects called for well known and easily found at and before their respective dates, and possessed all the requisites of valid locations under the land law, these respondents are advised is not the fact, but, on the contrary are void and illegal, and do not possess the requisites of valid locations in pursuance of the land law. These respondents further state that they are advised that the same has been illegally surveyed; and that, as to the entry of 10,000 acres, a grant has only issued for the quantity of 8,500. The charges in complainants' bill that the surveys were assigned by said Voss to Peyton Short, and by said Short to complainant Holmes, together with the charges of the other co complainants having a joint interest, are facts unknown to these respondents, and they cannot admit the same, but require full proof thereof. They further answer that it is true Christ. Clarke did make the entry in complainants' bill set forth, but these respondents are ignorant of its legal validity, but are advised that the same is a good and valid entry; that the same has been surveyed according to law, and the special calls thereof; and that a grant has issued of elder date than the one under which the complainants claim title, viz. on day of February, 1785; and it is also true that the same, as stated in complainants' bill, has been regularly conveyed to the father of these respondents from the patentee, and by him regularly conveyed to these respondents; all of which conveyances, if required by the court, can be produced and shown; they now rely upon their elder, legal, and equitable title. And, having answered all that was material for these respondents to answer, they pray to be hence dismissed, and by appropriate decree recover of complainants their costs about this case and on this behalf expended; and they, in duty bound, will ever pray, &c.

State of Kentucky, *Gallatin County, sct.*

John Moreland and Walter Moreland personally appeared before me, the undersigned, a justice of the peace in and for said county, and made oath according to law, that the above answer contains the truth, and nothing but the truth, as far as they know or believe. Given under my hand, this 20th day of October, 1826.

GEO. STROTHER, *J. P. G. C.*

Cause heard.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1827, (until which time this cause was continued,) this cause came on to be heard upon the bill, answer, and exhibits; but the court not being sufficiently advised, took time, &c.

Order survey.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid, to wit, the May term, 1827, on motion of the complainants, it is ordered that the surveyor of county, , do go on the land in controversy between the parties on the day of next, if fair, if not, on the next fair day, and then and there survey and lay off the same as either party may direct, having due regard to all deeds and other evidence that may be produced, report all matters of fact specially, and return one fair plat and certificate thereof into the clerk's office of this court, thirty days at least before the day of trial; and the marshal, or one of his deputies, is directed to attend the said surveyor, to remove force should any be offered.

The following agreements are filed in this cause, to wit:

Agreement.

We agree that the suit John Holmes, &c., against Moreland and others, shall progress in the names of the parties to the record, and that neither party will avail themselves of any exceptions on account of the death of either of the parties since the pendancy of the suit, but that the cause shall be tried, and the decree be as valid as if the heirs of any such party was before the court.

R. WICKLIFFE, *for complainants.*
SAML. TODD, *for defendants.*

Filed May 8, 1829.

Agreement.

It is agreed that John Howard entered, by virtue of his claim of 7,945½ acres, on the same by his tenants, and within the claim of C. Clarke, that the entry was within the boundary of said Clarke; that Howard's claim wholly covered the claim of Clarke; that the entry so made was done in the year 1804, and continued without interruption adverse to the claim of Voss and Short's claim, now set up by complainants, until the year 1813, when Howard, in an action of ejectment by virtue of Clarke's claim, was evicted, and the possession taken by virtue of the judgment of eviction of William Moreland, deceased, a purchaser from Clarke, and such possession continued by said Moreland until his death; and that possession continued down by the defendants, Morelands, as devisees of their father, to the present time; that said possession was adverse to the claim set up by complainants, and was by a continued and actual residence thereon.

It is admitted that Daniel Trout, deceased, in the year 1808, purchased the claim of Daniel and Hite's 600 acres, and, at that time, by his two sons, entered thereon by virtue of said claim; and that they, the said sons, Daniel and Jeremiah, have actually resided thereon ever since, and still reside on the same; that the defendants, Overpeck and Buchannon, have entered under the said Daniel, sen., deceased, and Daniel and Jeremiah, the defendants, some time in the year 1818, and now reside thereon; that said possession as aforesaid has remained without interruption by actual occupancy, and adverse to the claim set up by the complainants.

The grant to Daniel and Hite is elder in date than Howards, or any other claim interfering with Daniel and Hite's 600 acres. The grant to Howard is elder in date than the grant to Peyton Short, under whom the complainants set up title. The grant to Clarke is elder in date than the grant to Howard.

R WICKLIFFE.
SAML. TODD.

Agreement.

We agree that this suit shall now be set down for hearing as to Daniel Trout, Jeremiah Trout, Jacob Overpeck, William Buchannon, Walter A. Moreland, John Moreland, and William Moreland, and stand as to the rest; and that the matters in controversy is of the value of $2,000; but that the value of the land holden by any one of the defendants is less than $2,000.

That the paper purporting to be a plat of the land in contest may be used as evidence to show the position of the object, the length of the line admitted thereon by counsel, and have the same effect as if made under an order of this court. It is also admitted that James Patton, the owner and holder of the entry of 8,400 acres, is dead, and died in the year 1816. It is also admitted that William Roberts, the surveyor who made said survey, died before the commencement of this suit, and that William Meriwether, whose deposition is filed in this cause, is the same man who had a suit with Henry Davidge and others, in the court of appeals of Kentucky.

R. WICKLIFFE, *atto. for the complts.*
S. TODD, *atto. for defts.*

Agreement.

We agree that the land in contest is within the bounds of defendant John Howard's claim, and that the whole of the heirs of John Breckenridge were infants at the time of his death, and that Letitia Grayson was then, and is still, a feme covert. That said Breckenridge died winter 1806 *and* '7—left the following children: Letitia, about 19 years of age, married to Alfred Grayson; that Grayson died about 1819, and she intermarried to Peter B. Porter, her present husband, about the year 1823: Jos. Cabell Breckenridge, about 16 years of age; John Breckenridge, about 14 years of age; Robert J. Breckenridge, about 12 years of age; Mary Ann Castleman, about ten years of age; James Breckenridge, about 5 years of ; and William Breckenridge, about 3 years of age; that the complainants have always resided out of the State of Kentucky.

SAML. TODD,
Counsel for defendants.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1829, (until which time this cause was continued,) came the parties aforesaid, by their counsel, and, by agreement, leave is given the complainants to file an amended bill herein; which is done accordingly; to which amended bill the defendants filed their answers; and the complainants, for replication to said answer, say, that the statements therein contained, so far as the same contradict the allegations of the complainants' said bill, are untrue, and that the allegations of said bill are true And this cause came on to be heard upon the bills, answers, arguments, depositions, and exhibits, and being argued by the counsel of the parties, but the court not being sufficiently advised of and concerning the same, took time, &c.

Amended bill filed, and answer thereto, and repl. filed.

Cause argued, and time.

Amended bill.

The amended and supplemental bill of Michael Omealey, and others, against William Moreland and others. Your orators, by way of amendment to their original and amendatory bills heretofore filed in this cause, beg leave to state and explain, that the whole of the land in contest was purchased for the use and benefit of your orators, Holmes, Slater, Caton, and Omealey. That, by subsequent transactions, said complainant Omealy became, by and through the assent of said Slater and Caton, the trustee of them, the said Caton and Slater, when an agreement was entered into between your orators and a certain John Breckenridge, deceased, by which he undertook to render certain services, for which he was to obtain and have one moiety of the claim; and the original deed to Holmes never having been recorded, was by your orators handed to said Breckenridge, with other papers relative to the business, and with directions to Short to make the ; and full powers, as they are advised, were conferred on said Breckenridge by them to take a deed vesting the title in him and your orators. That these powers and agreements all appear in certain letters and papers filed in the suit lately decided by this court between your orators and the said heirs of said Breckenridge, to which reference is prayed to be made, and, so far as they tend to explain or relate to this controversy, are made part of this bill. Your orator states that said Breckenridge being so invested with power, and having so possessed himself of the deed first made and referred to in the original bill, came to an agreement with said Peyton Short to cancel the deed referred to in the original bill, and to take from the said Short a new deed to himself. And your orators *William* Omealey, trustee for your orators John Holmes and William Slater, and your orator Hugh Thompson, trustee for Richard Caton, and did, on the 21st day of September, 1804, receive and take such deed, and deliver over the first deed to Short, who then cancelled the same by erasing his name therefrom, as will better appear from said deeds or papers, both of which are herewith filed, and made a part of this bill. Your orators state that said Breckenridge having departed this life in January, 1806, without performing his part of the contract, they, by their attorney, commenced their suit against his heirs, most of whom were infants at the time of his death, and one of them then and still a feme covert, to obtain a cancelment of the last named deed so obtained by said Breckenridge. It appearing that said Breckenridge had only partially complied with his contract, the deed was decreed to be cancelled as to all the lands within two adverse claims, to wit, that of the defendant Howard and Williams, or Brown, and the complainants decreed to convey to Breckenridge's heirs one moiety out side of these claims, which will better appear by the decree and the deeds made thereon, which are likewise made a part of this bill.

Your orators would state that the whole of the land in contest is included in John Howard's claim referred to in the deed from Breckenridge's heirs to your orators, and of course the equitable title now and ever since its date, fully and entirely vested in your orators. Your orators pray that, the whole case considered, that the proper relief be decreed them, &c.

R. WICKLIFFE.

Decrees referred to in amended bill above.

UNITED STATES OF AMERICA, *7th Circuit, Kentucky District, sct.*

NOVEMBER TERM. *November 6, 1822*

MICHAEL OMEALEY, &c., *complainants,*
against } *In Chancery.*
JOHN BRECKENRIDGE'S HS., &c., *defendants.*

This day came the parties, by their attorneys, and the cause being heard on the bill, answer, and exhibits, it is decreed and ordered that the defendants, the heirs of Breckenridge, do, on or before the day of , by deed of warranty against themselves, and all persons claiming under their ancestor or themselves, release unto the complainants all their right, title, and interest to the lands lying within the survey and patent of John Howard, and all the land lying within the survey of Quirk, purchased by John Brown, and by him sold to Williams. And as to all the residue of said claim under the surveys and patents of Voss, lying out side of, and below the said surveys of Howard and of Quirk, it is considered by the court that the heirs of said Breckenridge are entitled to have one equal moiety thereof in value, to be divided according to quantity and quality. And Daniel Farly, Jacob Prior, and Henry Young, are appointed as commissioners, who, or any two of them, are directed to make partition thereof, and report to this court, to enable them to make a final decree herein. And it is further decreed and ordered that each party pay *his* own costs in this behalf expended.

UNITED STATES OF AMERICA, *7th Circuit Court, Kentucky District, scl.*

MAY TERM. *June 16, 1824.*

MICHAEL OMEALEY, &c., *complainants,*
against } *In Chancery.*
JOHN BRECKENRIDGE'S HEIRS, &c. &c., *def'ts.*

It appearing that the name Michael Omealey, instead of William Omealey, has been stated in the interlocutory decree, it is ordered that said decree, as to that particular, be altered and amended; and the commissioners, Young and Pryor, heretofore appointed by this court, having, agreeably to said decree, and the written request and directions of R. Wickliffe, attorney for the complainants, and Robert J. Breckenridge, attorney and agent for a part of the defendants, and guardian ad litem for the infant, returned into court the division and allotment of the land described in the decree; which division and allotment being seen and approved of by the court, the same is ordered to be recorded; and the court do decree and direct that the defendants do render to the complainants, their agent or attorney, all the land described in the plat of the division and allotment, by the letters A D, and figures 1 4, containing 1,177¾ acres of land, be the same more or less; and do further, at the request and expense of the complainants, or their agent, execute to them a deed of release to the same; and the court do further decree and order that the complainants do render to the defendants, their agent or attorney, possession of the land designated on the plat by the Ohio river; the dotted line, the figures 1 and 4, and the letters C B, containing two thousand one hundred and one-half acres of land, be the same more or less; and also, on request, execute to the defendants a deed of release for the same; and the court do further direct, order, and decree, that the defendants do, agreeably to the interlocutory decree aforesaid, release to the complainants all right and title which they, or any of them, have to the remainder of the tracts of land mentioned in the bill and said decree; and it is decreed and ordered that the costs of the division be equally paid by the parties.

Breckenridge's deed of commission to Wickliffe.

Whereas the honorable the circuit court of the United States, by their decree rendered in a certain suit in chancery late depending in said court, wherein William Omealey and others were complainants, and the heirs and representatives of John Breckenridge, &c., were defendants, appointed Robert J. Breckenridge commissioner to convey to the complainants and R. Wickliffe, agreeably to the said decree, the right, title, and interest of the said heirs, representatives of John Breckenridge. Now, in consideration of the premises, the said Robert J. Breckenridge doth alien and convey, release and confirm, all the right, title, and interest of Peter B. Porter and Letitia Porter his wife, late Letitia Breckenridge, of Mary C. Breckenridge, relic*k* and devisee of J C. Breckenridge, deceased, of William L. Breckenridge, John Breckenridge, and the said Robert, to R. Wickliffe, of all their undivided interest in and to the claims patented to *Payton Shourt*, outside of the claims of John Howard; and that Eli Williams, except so much as is decreed to the heirs of said Breckenridge, and contained in a deed to them of even date with this indenture; and as to all the land within the lines of said Howard and Williams, the said heirs of John Breckenridge do release and convey the same to the said Omealey and Hugh Thompson, and their heirs, for ever—but without recourse to them and their heirs for ever.

In witness whereof, they have hereunto set their hands and seals, this 23d day of May, 1826.

PETER B. PORTER, [SEAL.]
LETITIA P. PORTER, [SEAL.]
MARY C. BRECKENRIDGE, [SEAL.]
JOHN BRECKENRIDGE, [SEAL.]
WILLIAM L. BRECKENRIDGE, [SEAL.]
ROBERT J BRECKENRIDGE, [SEAL.]
By ROBERT J. BRECKENRIDGE, *Com'r.*

UNITED STATES OF AMERICA, *Seventh Circuit, Kentucky District*, sct.

I, John H. Hanna, clerk of the seventh circuit court of the United States in and for the Kentucky district, do hereby certify that the above deed was this day produced in court, and acknowledged by Robert J. Breckenridge, commissioner for and on behalf of the grantors, to be their act and deed for the purposes therein mentioned, and ordered to be recorded, which is done accordingly.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this 23d day of May, 1826.

JNO. H. HANNA. [L. S.]

Answer of Trouts, &c.

The answer of Jeremiah Trout, Daniel Trout, William Buchannon, Jacob Overpeck, John Moreland, Walter A. Moreland, and William Moreland, to the amended bill filed at this May term, 1829.

These defendants, saving, &c. for answer thereto, states, that they, the said defendants, together with those under whom they claim, have been in the actual occupancy and peaceable possession of all the land claimed by them, in their former answers, for upwards of twenty years before the filing of the said amended bill: to which this answer jointly, by said defendants, is now made. They state that, as to the matters and things set forth and alleged in said amended bill, they are entirely ignorant; they deny the whole statement therein set forth, and require full proof thereof. They state that their entry on, and possession of, said lands as aforesaid was taken and holden by entries, surveys, and patents, adverse to the claim set up by complainants. They pray as in their former answers.

SAM. TODD, *for def'ts.*

And afterwards, to wit, on a subsequent day of the term and year last aforesaid, to wit, the May term, in the year 1829, the court being now sufficiently advised of, and concerning, the premises, delivered the following written opinion, to wit:

Opinion of Court.

The complainants state in their bill that "Edmund Voss, on the 11th day of October, 1783, made, with the surveyor of the proper county, the following location: Edward Voss enters 10,000 acres by virtue of two treasury warrants, Nos. 8,991 and 8,990, beginning at the northwest corner of Patton's 8,400 acres' survey; thence, with Allen's line, westwardly to the river, and along Roberts's line on the east for quantity; also, 5,000 acres by virtue of treasury warrant, No. 8,989, beginning at the southwest corner of Patton's 8,400 acre survey, then westwardly with Patton, Pope, and Thomas's survey; thence up the river, and on Patton's line on the east, for quantity." That surveys having been duly executed on said entries, the same were assigned to a certain Peyton Short, to whom patents were issued bearing date the 12th and 14th days of March, 1790; that, on the 10th day of December, 1796, Short conveyed to John Holmes, by deed, his whole claim to the land in controversy, but that, by contract, it is now jointly held by the said Holmes and the other complainants; and that the above deed is held for their joint benefit The complainants further state that conflicting entries have been made by different persons since their location on the same land, and elder patents obtained; and they pray that a conveyance may be decreed to them on the ground of their prior equity. In their answers, the defendants deny the equity set forth in the complainants' bill; and, having the elder legal title founded upon valid entries and surveys, they pray that the bill may be dismissed. Since the commencement of the present term, the complainants have filed an amended bill, stating that the whole of the land in contest was purchased for the use and benefit of Holmes, Slater, Caton, and Omealey; and that, subsequently, by the consent of Caton and Slater, Omealey became their trustee; that an agreement was entered into between the complainants and a certain John Breckenridge, deceased, by which he undertook to render certain services, for which he was to have one moiety of the land; that the original deed to Holmes, never having been recorded, was handed to said Breckenridge, with other papers relating to the business, and with directions to Short to make a deed to the complainants and Breckenridge; that the said Breckenridge being in possession of the deed to Holmes, and authorized to receive a conveyance from Short to himself; and the complainants agreed with Short to cancel the deed to Holmes, which was done by delivering it to Short, who cancelled it by erasing his name, and a new deed was made by him to Breckenridge and to William Omealey, as trustee for John Holmes and William Slater, and to Hugh Thompson, as trustee for Richard Caton, bearing date 21st day of September, 1804. The amended bill further states that Breckenridge departed this life in 1806, before his part of the contract was performed, and that a bill was filed against his heirs by the complainants for a re-conveyance of the land; that, on the final hearing of this case, the court decreed that, as Breckenridge had but in part performed his contract, the deed should be cancelled as to all the lands within two adverse claims, to wit: that of the defendant Howard and Williams or Brown; and the complainants were decreed to convey to Breckenridge's heirs one moiety outside of these claims; in pursuance of this decree, deeds were executed. The complainants state that the whole of the land in controversy is included in John Howard's claim, under which the defendants claim, and is referred to in the deed from Breckenridge's heirs to them; and that, since the date of such deed, the equitable title has been vested in them. To the amended bill, Jeremiah Trout, Daniel Trout, William Buchannon. Jacob Overpeck, John Moreland, Walter A. Moreland, and William Moreland, defendants, answer, that they, with those under whom they claim, have been in the actual occupancy and peaceable possession of all the land claimed by them, in their former answers, for upwards of twenty years before the filing of the amended bill, and they deny the statements contained in it. On filing the amended bill, the parties agreed that the suit should progress in the names of the parties to the record, and that no advantage should be taken on account of the death of either of the parties since the pendancy of the suit; and that the decree should be as valid as if the heirs of any such party were before the court. It was also agreed that John Howard entered on the land in controversy, by virtue of his claim of 7,945½ acres, by his tenants, and within the claim of C. Clarke; that the entry was within the boundary of said Clarke, and that Howard's claim wholly covered the claim of Clarke; that this entry was made in the year 1804, and continued, without interruption, adverse to the claim of Voss and Short, set up by the complainants, until the year 1813, when Howard, in an action of ejectment, by virtue of Clarke's claim, was evicted, and possession taken by William Moreland, deceased, a purchaser from Clarke; and that such possession was continued by said Moreland until his death, and that his devisees have remained in the possession adverse to the complainants ever since. It was admitted that Daniel Trout, deceased, in the year 1808, purchased the claim of Daniel and Hite's 600 acres within the tract claimed by complainants, and, at that time, by his two sons, Daniel and Jeremiah, entered into the possession, which is still continued; that the defendants, Overpeck and Buchannon, in the year 1818, entered into the possession of the above tract, under the said Daniel and Jeremiah, and have resided on it until the present time; all of whose possessions are adverse to the complainants. The grant to Daniel and Hite is admitted to be elder in date than Howard's or any other interfering claim; Clarke's grant is elder than Howard's, and Short's bears date after Howard's. As the defendants possess the elder grant, the complainants must rely on their prior equity, and, to show this, they endeavor to sustain the entry of Voss under which they claim. This entry calls to begin at the northwest corner of Patton's 8,400 acres' survey, and for Allen and Roberts's line. Patton's entry was made on the 26th December, 1782, for 8,400 acres, upon a treasury warrant, No. 12,311, about two miles up the first branch above the Eighteen Mile creek, beginning at a tree marked J. P., to run north five miles, then to extend off at right angles for quantity: this entry was surveyed on the 20th September, 1783, and calls to begin at a mulberry, elm, and sugar-tree, marked J. P., standing on the bank of the first large creek running into the Ohio above the Eighteen Mile creek, two miles up the said creek. On the 11th October, 1783, John Allen entered 1,000 acres, part of a treasury warrant, No 14,198, beginning at the northwest corner of Patton's 8,400 acre survey, and running with his line south 250 poles, thence down the creek on both sides westwardly for quantity, to be laid off in one or more surveys. Roberts's entry was made on the 26th December, 1782, the same day Patton's entry was made. It is agreed, by the counsel for the defendants, that Patton's entry, on which Voss's entry depends, is void for want of certainty and notoriety in its calls. The depositions of several witnesses have been read to sustain this entry. William Meriwether swears that Eighteen Mile creek was known previous to the year 1782, and that Patton's creek is the first one running into the Ohio above Eighteen Mile creek, except Bell's spring branch, which is not much more than a mile in length; that Patton's creek was so called from the time the above entry was made, and was generally pretty well known by that name as early as October, 1783. He does not recollect the year he became acquainted with the tree marked J P., but he thinks, within a year or two after the entry was made, he was at the tree, about two miles up Patton's creek, lacking forty poles, in company with persons who were about purchasing Patton's entry. The letters J. P were very large, and marked on a mulberry tree standing near the creek; that Patton informed him of the entry shortly after it was made, and that he had marked the tree, and run one of the lines before the entry was made. He states that, from the appearance of the tree, he has no doubt of its having been marked at the time as represented by Patton. He further states, he thinks it would be almost impossible for any person to have searched for the tree without finding it, after finding the beginning corner of Patton's entry and survey—it would not be difficult, he states, for a subsequent locator to find the northwest corner by tracing the line; that he has traced this line several times to the corner, on the top of a hill at a sugartree and two ashes, which were plainly marked. At the beginning corner of Patton's survey, the witness states there was an appearance of a large encampment, and several trees were marked, some with the letters J. P., and others with the initials of his own name; and that the trees about the place were much chopped. Benjamin Roberts states that he believes Eighteen Mile creek has been generally known since the year 1780, and that he saw it in 1783; that Patton's creek is the first one of any notoriety running into the Ohio above the Eighteen Mile creek: and it was generally known by that name in the spring of the year 1783. He thinks that a good woodsman, by searching up the creek agreeably to the calls of Patton's entry, could have found his beginning corner. Joseph Saunders states that he knew Eighteen Mile creek in June, 1780; that Patton's creek is the first creek of any note above Eighteen Mile creek, and its name was derived from the entry of Patton. He states that, in May, 1783, Patton showed him a mulberry tree marked J. P. standing on the bank of Patton's creek, about two miles from the mouth, and said it was his beginning corner; the letters J. P. were large, and appeared to have been marked with a tomahawk; and the witness thinks the tree might have been found by any one searching for it. Several other witnesses were acquainted with Patton's entry at an early period, and with its principal calls, but not until some years after it was made. No doubt can exist that the Eighteen Mile creek was notorious at the time the entry was made, and that the branch called for is the one known by the name of Patton's creek; between this creek and the Eighteen Mile creek there are one or two small branches, neither of which could be taken for the call in the entry: but is objected to the entry, that the call, "about two miles up the first branch," is not sufficiently definite to direct a subsequent locator to the marked tree; that the side of the creek on which this tree stands is not designated, nor its distance from the creek; and that, by actual measurement on a straight line from the mouth of the creek, the distance to the tree falls forty poles short of two miles. It is also contended, by the calls of the entry, it would seem to have been the intention of the locator that the body of the land should be about two miles up the creek, rather than that point should constitute his beginning corner. This objection seems not to be well taken: the words of the entry are, James Patton enters 8,400 acres, &c. about two miles up the first branch above the Eighteen Mile creek, beginning at a tree marked J. P.; and no one, it is believed, could mistake these calls, or hesitate to conclude that the tree marked was the beginning corner: from this corner the entry calls to run five miles north, &c. The rule which governs in the construction of entries has been long fixed, and if this were not the case, it would obviously result from circumstances. Entries were made at an early day, by individuals who were more acquainted with the stratagems of savage warfare than the precision of language. They were better hunters than critics: entries must be construed by the popular signification of the words used, rather than by the grammatical arrangement of sentences. If the intention of the locator can be satisfactorily ascertained from the calls of his entry, it must be sustained. The call to run up the creek, in popular signification, directs the inquirer to follow the stream: as the Eighteen Mile creek is below Patton's creek, any person beginning his search at that point for the marked tree, would trace the Ohio to Patton's creek, and would naturally seek for the marked tree on the lower side, about two miles from its mouth; but it would not be unreasonable to require a search on both sides of the creek. This search would somewhat increase the labor of a subsequent locator, but it would scarcely lessen the probability of finding the object. No witness saw the tree when it was marked, but Meriwether saw it one or two years afterwards; and, from the appearance of the letters J. P., he seems to have no doubt that they were made at the time Patton represented them to have been made. Saunders saw these letters in 1783, and the tree was pointed out to him by Patton, as his beginning corner: this was within five months after the entry was made, and several months before the entry of Voss. Several witnesses state that the beginning of Patton's entry could be found by observing its descriptive calls. The variation of forty poles, on a straight line from the distance called for in the entry, is not considered very material. The circumstances under which this entry was made, would authorize no one to expect greater accuracy: forty poles more or less than the exact distance of two miles, is a sufficiently limited range for a subsequent locator. Under all the facts established, the court are of opinion that the entry of Patton is shown to possess all the requisites of a valid entry: this entry was surveyed, on the 20th of September, 1783, twenty days before the entry of Voss. Voss's entry calls for the survey of Patton, though it does not appear at that time to have been recorded; the northwest corner of this survey, which is the beginning called for in Voss's entry, could easily be found by tracing the line from Patton's beginning corner; any variation in the length of this line, from the calls of the entry, cannot be material as to the defendant entry, as the distance is controlled by the marked corner proved to have been made. The other calls in the entry of Voss are believed to be sufficiently certain to enable the holder of a warrant to locate the adjacent land; and that is a substantial compliance with the requisitions of the land law.

The other entry of Voss for 5,000 acres, which calls to begin at the southwest corner of Patton's 8,400 acre survey, contains all the requisites of a valid entry. To show a title from the patentee, a deed, bearing date the 10th day of December, 1796, from him to John Holmes for 13,500 acres, is given in evidence. The signature of the grantor in this deed has been erased, apparently with the view of cancelling it; but is contended that, if such an inference can arise from the erasure, that it does not re-invest the fee in the grantor; that this can only be done by the solemnities of a deed duly executed One of the subscribing witnesses to this deed, whose deposition is introduced to prove its execution, states that he was written to by Short, to endeavor to make sales of the land for him; that, upon being told by Holmes what was the best he could do with it, the witness advised him to sell it, and told him that he thought Short would be satisfied; and the witness understood the land was sold. The witness states that, from his letter-book, this deed appears to have been forwarded by him to Holmes, on the 3d January, 1797. A letter from Short to Holmes, dated 29th September, 1794, in which he proposes to sell the lands at a certain price, is read in evidence. This letter, however, treats Holmes as an agent to sell the land, and not in the light of a purchaser. An obligation signed by Short, dated 10th December, 1796, is also in evidence. In this obligation, Short states that he "has executed a deed to Holmes, of that date, for two certain tracts of land, containing thirteen thousand five hundred acres, which said deed is deposited in the hands of W. Morton, of Lexington; and that, should Holmes be dissatisfied with the warranty given in said deed, and it is not in pursuance of the *meaning and intention* of the above letter, he agrees to enter into such an instrument of writing. From the whole of this evidence, it would seem to authorize the conclusion that the deed executed to Holmes was only designed to enable him to sell and make titles to the lands for the benefit of Short: but, if any doubt remained on this subject, it is removed by a subsequent deed executed by Short for the same lands to Holmes and others, without any reference to the former deed, and by the amended bill of the complainants, who state that the first deed was cancelled by agreement between Breckenridge and Short, and that they claim title under the one subsequently executed. The first deed, though absolute upon its face, was intended to make Holmes a trustee for the use of Short: and the court can have no difficulty, under the circumstances, in considering it a nullity so far it relates to the present controversy: this deed has never been recorded, nor does it seem to have been treated by the parties as a valid instrument. There is no satisfactory proof of its delivery. From all the facts, it appears, most probable, that it was forwarded to Breckenridge by Caton or some other person, and that it was never in the possession of Holmes, or intended to be delivered to him. By a letter dated 13th January, 1803, Holmes, by his trustee Omealey, requested W. Morton to surrender the deed to Breckenridge, who was authorized to receive a conveyance of the land from Short. The complainants must rely upon their conveyance from Short, dated 21st day of September, 1804. This deed conveys to *John* Omealey, trustee for John Holmes and William Slater, and to H. Thompson, trustee of Richard Caton, and to John Breckenridge, the tracts of land set forth in the bill.

From the amended bill it appears that Breckenridge was entitled to one moiety of the entire claim as a compensation for certain services to be rendered by him; that he died before the services were completed; and that the complainants filed their bill against his heirs, and obtained a decree that cancelled the deed to certain parts of the land, which, in pursuance of such decree, were conveyed by the heirs of Breckenridge to the complainants. A question is here made by the defendants' counsel, whether the title set up by the complainants, in their amended bill, being different from that stated in the original bill, is not in fact the commencement of a new suit, and, consequently, gives to the defendants a right to insist on the statute of limitations in bar to the complainants' right of recovery. If such shall be the effect of the title set forth in the amended bill, it is agreed between the parties that advantage may be taken of it. In the first bill filed, the title is stated to have been derived from Short, the patentee, to Holmes, with whom contracts were made by the other complainants for certain interests in the land. The amended bill sets up a title, by deed, from Short to *John* Omealey, trustee for John Holmes and William Slater, and to H. Thompson, as trustee for Richard Caton, and to John Breckenridge. Between these derivations of title in law, there is an essential variation, but not in equity. The equitable interests of the parties may be the same under both deeds. In the first bill, the complainants state that, although the title was acquired, and is held by Holmes from Short, yet, by contracts with said Holmes, the estate is their joint property, and that Holmes held it for their use: such an alteration in this bill, as to state the deed to have been made by Short to the complainants instead of to Holmes, does not change the complainants' equity, and cannot be considered as the institution of a new suit. The case is however different, so far as it respects the interest of the complainants under the decree against the heirs of Breckenridge. A conveyance from them to the complainants of a part of the land conveyed by Short to their ancestor, was decreed on the ground that the consideration had, in part, failed. Breckenridge died before the services he agreed to render were fully performed. In the deed to him there was no reservation or condition. It was only by the aid of a court of chancery that the right of the complainants would be established and enforced against a part of the land. Until the decree which cancelled the deed was pronounced, the complainants possessed no claim, in law or equity, to the land in question, which could be rendered effective against the claim of the defendants. To the decree, therefore, must the complainants look for the origin of their claim to the land.

This decree was obtained in November, 1822; and, for the first time, a claim is set up under it in the amended bill. Under the agreement of the parties, this part of the bill must be considered as the substitution of a distinct right, essentially different from any pretence of claim contained in the first bill; and, consequently, cannot be considered in a more favorable point of view, as to the statute of limitation, than the assertion of the same right in a bill filed at the present term. It will follow, therefore, that the title to the land conveyed to the complainants, under the decree against the heirs of Breckenridge, is, so far as it covers the land which has been occupied by the defendants, and those under whom they claim, adversely to the complainants, for twenty years before the filing of the amended bill, in law and equity, is vested in the defendants. The balance of the tract claimed by the defendants within the entry of Voss, must be relinquished to the complainants, as they hold the prior equity. The interfering claims will limit Voss to the calls of his entry, but the surveys are not protracted in such a manner as to enable the court satisfactorily to designate the boundaries of the parties as fixed by this decision. Unless, therefore, the parties, from their local knowledge of the land, shall be able to lay down the interferences, it may be necessary to direct a survey

And afterwards, to wit, on a subsequent day of the term and year last aforesaid, to wit, the May term, 1829, the court do order and decree that Jonathan Taylor, surveyor of Oldham county, do lay off the land in controversy, by beginning at James Patton's N. W.

Order survey.

corner, designated on the connected plat, and lay down James Allen's entry of 1,000 acres, running from said corner with patent line, south 250 poles, and at right angles for quantity, and also lay down said entry by running from the base line, so that the lower line will cross Barebone creek the same distance that the base line crosses it: from Patton's northwest corner of said Allen, with said lines, parallel to the several courses of the creek, within the said Allen's survey, when so made; and if Barebone will not be included within the survey of Allen, when so made, the survey will be so varied as to make the creek pass out of the lower end of the survey as near to the point of distance that it strikes the upper line as the general course of the stream, within the survey, will admit, to include both sides of the stream. That he then lay down John Roberts's entry, by running the first line thereof six miles parallel to the general course of the Ohio river, from where a due-west line from Patton's corner to the river will strike it, to a point six miles on said river when reduced to a straight line; that he then lay off Voss's entry of 10,000 acres by first running a due-west line to the river, and, on the course of Roberts's line, until the quantity of 10,000 acres of land is obtained; and then the course of Allen's west line, when laid down parallel to Barebone, until it strikes the river; and then up the river, and with the course of Roberts's line as before directed. And that he then ascertain, by metes and bounds, the interference between the complainants' entry, when surveyed in each position, and the defendant's surveys. And the court do further order and direct that the surveyor aforesaid survey and lay down the said claims in any or additional positions which either party may direct, and make report to the court, to enable the court to make a final decree.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1830, (until which time this cause was continued,) came the parties aforesaid by their counsel in the foregoing cause, and said cause came on for final hearing upon the bills, answers, depositions, and exhibits therein, and was argued by the counsel of the parties; but the court, not being sufficiently advised of and concerning the same, took time, &c.

The following are the depositions in this cause, to wit:

Interrogatories on part of Complts.

JOHN HOLMES, HUGH THOMPSON, &c. } *In Chancery in the Circuit Court*
against } *of the United States for the Dis-*
JOHN HOWARD, and others. } *trict of Kentucky.*

Interrogatories to be put to the complainants' witnesses, for the complainants in the above suit.

1st. Are you acquainted with the Ohio river, and Eighteen Mile creek that runs into it? and were you acquainted with them previous to December, 1782? and was the said Eighteen Mile creek notorious and well known by that name at and before the 26th day of December, 1782? State all you know on this subject.

2d. Are you acquainted with the creek now called Patton's creek, and is that the first creek or branch that runs into the Ohio? and was or was not that creek notoriously known and called Patton's creek at and before the 11th day of October, 1783? and, if it was, was it so called because it was known or understood to be the creek on which James Patton made his location for 8,400 acres of land? State what you know or have understood on this subject.

3d. Do you know any thing of a tree marked J. P. standing about two miles up the said branch, now called Patton's creek? And if you do, state what you know on that subject, and when you first saw the tree.

4th. Did said tree stand immediately on the bank of the branch, and was it or not in your opinion easily to be found by any one in search of it? State whatever you know on that subject.

5th. Do you know any thing of James Patton's survey, when it was made? Say all you know about it.

6th. You have now before you James Patton's entry, dated the 26th day of December, 1782; his survey, dated the 30th of September, 1783; and James Allen's entry of 1,000 acres, dated 11th of October, 1783; and Edward Voss's entry, of the same date, calling for said James Patton's northwest corner of his survey of his 8,400 acres aforesaid. Is it your opinion or not, from what you know, that a subsequent locator or woodsman might, on the said 11th day of October, 1783, have easily found said Patton's beginning corner of his survey, and his northwest corner, which the beginning of Voss and Allen? State all you know relative to this subject.

7th. When did you first become acquainted with the survey of 8,400 acres, and was the beginning corner plainly marked or not on Patton's creek, and was easily to be found; and was the line running 1,600 poles north to a sugar-tree and two ashes on the top of a hill, plainly marked? and were the corner trees at each end of said line plainly marked and easily seen? State what you know on this subject.

8th. You have James Patton's entry of 8,400 acres aforesaid now before you—is it your opinion or not, from what you know of the objects called for and described in said entry, that the beginning corner of said entry could have been found by reasonable search and diligence at and before the 26th day of December, 1782, by any good woodsman acquainted with that part of the country?

Meriwether's deposition.

The deposition of William Meriwether, taken before the undersigned, a justice of the peace, and judge of the county court, at the tavern of Mrs. Price, in the town of Frankfort, on the 10th day of June, 1825, upon dedimus and interrogatories in the suit in chancery depending in the circuit court of the United States, wherein John Holmes, &c., are complainants, and John Howard, and others, are defendants, depending before the circuit court of the United States for the district of Kentucky.

Answer to first interrogatory. That he was well acquainted with the Ohio river, and had seen the mouth of Eighteen Mile creek previous to the year 1782: the creek was then known by the name of Eighteen Mile creek.

Answer to 2d interrogatory. I am well acquainted with the creek called Patton's creek. It is the first creek putting into the Ohio above Eighteen Mile creek, except Bell's Spring branch, which is little upwards of a mile long. I always understood that the creek took its name from Patton's entry, which was made on it in the year 1782; and, I think, as early as October, 1783, it was generally pretty well known by the name of Patton's creek.

Answer to 3d interrogatory. I do not remember the year in which I became acquainted with the tree marked J. P.; but at a very early period, I think it was within a year or two after Patton's entry was made, I was at the tree, standing about two miles up Patton's creek, lacking 40 poles. I was accompanied by some other men, who had an intention of buying Patton's entry: the letters J. P. were marked on a mulberry in very large letters. There was a great appearance of a large encampment at the place, and several other trees were marked, some with the letters J. P., and others with the initials of my own name, W. M. The trees were also much chopped about the place. The mulberry tree stood something short (about forty poles) of two miles from the mouth of the creek on a straight line, and stood near the creek. J. Patton, deceased, informed me, shortly after he made the entry, of his having made it, and that he had marked the tree, and run one of the lines before he had made the entry; and from Patton's description of the tree, I was enabled to find it without difficulty; and, from the appearance of the tree, I have no doubt of its being marked as early as what he stated to me it was.

Answer to 4th interrogatory. The tree marked J. P., as I before stated, stood not very far from the creek, and I think it would have been almost impossible for any one to have searched for the place and tree, and not to have found it.

Answer to 5th interrogatory. I have no knowledge when James Patton's survey was made.

Answer to 6th interrogatory. The papers referred to in the interrogatory are not before me; but, independent of them, I have already stated that it would be almost impossible for a subsequent locator not to have found James Patton's beginning corner; and then, by running the line, he might, I should think, have easily found his northwest corner. I give this as my opinion, upon the supposition that a subsequent locator would go upon Patton's creek to search for the entry. Bell's Spring branch, at the mouth, might have been mistaken for the creek; but not being much more than about a mile long, and Patton's entry calling to begin two miles up the creek, this would prove to him Bell's Spring branch was not the creek meant.

Answer to 7th interrogatory. I have already answered when I became acquainted with Patton's entry on Patton's creek. The beginning was plainly marked. I have been along the first line several times to the corner on the top of a hill, at a sugar-tree and two ashes: these were plainly marked.

Answer to 8th interrogatory. A copy of James Patton's entry is not before me: I have already stated that the beginning of said entry could have been easily found, but not before the 26th December, 1782, because that is the day on which the entry is made. The deponent knows nothing farther which he deems of importance. He farther saith not.

W. MERIWETHER.

The above deposition of William Meriwether was this day taken, subscribed, and sworn to, before me, a justice of the peace, and judge of the county court of Franklin county, at the place, and in the manner in the preamble mentioned.

O. G. WAGGENER, *J. P.*

June 10, 1825.

Abbott's deposition.

The deposition of John Abbott, taken at the house of Nelson Wright, in the county of Oldham, on the 1st day of June, 1824, to be read in evidence in the suit in chancery depending in the circuit court of the United States for the district of Kentucky, wherein John Holmes, Hugh Thompson, &c., are complainants, and John Howard, and others, are defendants; who, being first cautioned and sworn to speak the whole truth by the undersigned, a justice of the peace for said county, who caused the following interrogatories, as certified from under the hand of the clerk of said court, to be propounded to said deponent, deposeth and saith:

1st. Are you acquainted with the Ohio river, and Eighteen Mile creek that runs into it, and were you acquainted with them previous to December, 1782? and was the said Eighteen Mile creek notorious and well known by that name at and before the 26th day of December, 1782? State all you know on this subject.

Answer. I passed down the Ohio river about the first or second day of May, 1782, by the mouth of Eighteen Mile creek, and landed at Louisville on the first or second day of May, 1782, as aforesaid. The said Eighteen Mile creek was then well known as Eighteen Mile creek, to the best of my recollection. I never heard any other name for said creek, and am confident that it was well known as Eighteen Mile creek on the 1st or 2d day of May, 1782.

2d. Are you acquainted with the creek now called Patton's creek; and is that the first creek or branch that runs into the Ohio; and was or was not that creek notoriously known and called Patton's creek at and before the 20th day of October, 1783? and if it was, was it so called because it was known or understood to be the creek on which James Patton made his location for 8,400 of land? State what you know or have understood on this subject.

Answer. In the fall of the year 1782, I was one of Capt. Robert Floyd's company of volunteers under General Clarke: we marched up the Ohio river to the mouth of Licking river, and built a block house at Cincinnati, passing in our route the first creek above Eighteen Mile creek. Said creek was then well known as Patton's creek to the army, and believe there was about 11 hundred in our army: a number of the men were from Louisville, and the adjacent stations; and the said creek, now called Patton's creek, was then well known by the Louisville troops as Patton's creek. I myself knew it as Patton's creek, and never heard any other name for said creek.

3d. Do you know any thing of a tree marked J. P., standing about two miles up the said branch, now called Patton's creek? And if you do, state whatever you know on that subject.

Answer. I know nothing of the tree.

4th. Did said tree stand immediately on the bank of the branch; and was it not, in your opinion, easily to be found by any one in search of it? State what you know on that subject.

Answer. I know nothing about it.

5th. Do you know any thing of James Patton's survey, when it was made? Say all you know about it.

Answer. Nothing.

6th. You have now before you James Patton's entry, dated the 26th day of December, 1782; his survey, dated the 30th of September, 1783; and James Allen's entry of 1,000 acres, dated the 11th of October, 1783; and

Edward Voss's entry, of the same date, calling for said James Patton's northwest corner of his survey of his 8,400 acres as aforesaid. Is it your opinion or not, from what you know, that a subsequent locator or woodsman might, on the said 11th day of October, 1783, have easily found said Patton's beginning corner of his survey, and his northwest corner, which is the beginning of Voss's and Allen? State what you know relative to this subject.

Answer. I know nothing about it, only have frequently heard Capt. James Patton say he had a quantity of land on Patton's creek.

7th. When did you first become acquainted with Patton's survey of 8,400 acres; and was the beginning corner plainly marked or not on Patton's creek, and easily to be found; and was the line running 1,600 poles north to a sugar tree and two ashes, on the top of a hill, plainly marked; and were the corner trees at each end of said line plainly marked and easily seen? State whatever you know on this subject.

Answer. I know nothing.

8th. You have James Patton's entry of 8,400 acres aforesaid now before you—is it your opinion or not, from what you know of the objects called for and described in said entry, that the beginning corner of said entry could have been found by reasonable search and diligence at and before the 26th day of December, 1782, by any good woodsman acquainted in that part of the country?

Answer. I know nothing of the land claims, but Patton's creek was easiy found in the year 1782 by any woodsman And further this deponent saith not.

Given under my hand and seal, this 1st day of June, 1824.

his
JOHN × ABBOTT. [SEAL.]
mark.

OLDHAM COUNTY, sct.

The foregoing deposition was sworn to, and signed before me, the undersigned, one of the commonwealth's justices of the peace for said county of Oldham, on the day and date above written.

Given under my hand and seal, &c.,

WILLIAM GATEWOOD. [SEAL.]

Lane's deposition.

The deposition of Joseph Lane, taken at the same time and place, to be read as evidence in the foregoing suit, wherein John Holmes and Hugh Thompson, &c., are complainants, and John Howard and others, are defendants.

1st. Are you acquainted with the Ohio river, and Eighteen Mile creek that runs into it, and were you acquainted with them previous to December, 1782? and was the said Eighteen Mile creek notorious and well known by that name at and before the 26th day of December, 1782? State all you know on this subject.

Answer. I did not know any thing of Eighteen Mile creek until the year 1806: it was then well known as Eighteen Mile creek.

2d. Are you acquainted with the creek now called Patton's creek, and is that the first creek or branch that runs into the Ohio? and was or was not that creek notoriously known and called Patton's creek at and before the

20th day of October, 1783? and if it was, was it so called because it was known or understood to be the creek on which James Patton made his location for 8,400 of land? State what you know or have understood on this subject.

Answer. I have known Patton's creek since the year 1806, and believe it is the first creek or branch of any size above Eighteen Mile creek.

3d. Do you know any thing of a tree marked J P., standing about two miles up the said branch now called Patton's creek? And if you do, state what you know on that subject, and when you first saw the tree.

Answer. I was on Patton's creek in the year 1806 or 1807, about two miles from the mouth of said creek, and saw Alexander Montgomery, and others, fixing and confining a tree in said creek that had been washed up by the roots, and was told by the men that it was Patton's beginning corner.

4th. Did said tree stand immediately on the bank of the branch, and was it or was it not, in your opinion, easily to be found by any one in search of it? State whatever you know on that subject.

Answer. The tree had washed up, but this deponent believes that, when the tree was standing, it might have been easily found by a woodsman, or any one in search of it.

5th. Do you know any thing of James Patton's survey, when it was made? Say all you know about it.

6th. You have now before you James Patton's entry, dated the 26th day of December, 1782; his survey, dated the 30th of September, 1783; and James Allen's entry of 1,000 acres, dated 11th of October, 1783; and Edward Voss's entry, of the same date, calling for said James Patton's northwest corner of his survey of his 8,400 acres aforesaid. Is it your opinion or not, from what you know, that a subsequent locator or woodsman, on the said 11th day of October, 1783, could have easily found said Patton's beginning of his survey, and his northwest corner, which is the beginning of Voss and Allen? State what you know relative to this subject.

Answer. It is my opinion that a good woodsman might have easily found Patton's corner on Patton's creek, or his northwest corner, which is on the top of a high ridge, on the waters of Barebone creek.

7th. When did you first become acquainted with Patton's survey of 8,400 acres; and was the beginning corner plainly marked or not on Patton's creek, and easily to be found? and was the line running 1,600 poles north to a sugar-tree and two ashes, on the top of a hill, plainly marked; and were the corner trees at each end of said line plainly and easily seen? State what you know on this subject.

Answer. I did never notice the marks of the trees at Patton's beginning, but frequently have seen his northwest corner on the top of a hill, a sugar-tree and two ashes, plainly marked anciently.

8th. You have James Patton's entry of 8,400 aforesaid now before you—is it your opinion or not, from what you know of the objects called for and described in said entry, that the beginning corner of said entry could have been found by reasonable search and diligence at and before the 26th day of December, 1782, by any good woodsman acquainted in that part of the country?

Answer. I was not acquainted with the country until the year 1806: the marks of Patton's survey might then have been easily found by any person in search of it. And further this deponent saith not.

Given under my hand, this 1st day of June, 1824.

JOSEPH LANE.

OLDHAM COUNTY, sct.

The foregoing deposition was sworn to, and signed before me, the undersigned, one of the commonwealth's justices of the peace for said county of Oldham, on the day and date above written.

WILLIAM GATEWOOD. [SEAL.]

Law's deposition.

The deposition of Jesse Law, taken at the same time and place, to be read in evidence in the foregoing suit, wherein Holmes and Hugh Thompson, &c., are complainants, and John Howard, &c., are defendants.

1st. Are you acquainted with the Ohio river, and Eighteen Mile creek that runs into it? and were you acquainted with them previous to December, 1782? and was the said Eighteen Mile creek notorious and well known by that name at and before the 26th day of December, 1782? State all you know on this subject.

Answer. I been acquainted with Eighteen Mile creek since the year 1798: it was then well known by that name.

2d. Are you acquainted with the creek now called Patton's creek; and is that the first or branch that runs into the Ohio? and was or was not that *the* creek notoriously known and called Patton's creek at and before the 20th day of October, 1783? and, if it was, was it so called because it was known or understood to be the creek on which James Patton made his location for 8,400 acres of land? State what you know or have understood on this subject.

Answer. I have known Patton's creek from the year 1796. It was then well known by that name; and I have understood ever since I have been a citizen of this county, that Patton's creek took its name from Capt. James Patton making an entry of land on said creek.

3d. Do you know any thing of a tree marked J. P., standing about two miles up the said branch now called Patton's creek? And if you do, state whatever you know on that subject, and when you first saw the tree.

Answer. I know nothing of it, but have frequently heard of Patton's beginning, on Patton's creek, since the year 1796.

4th. Did that tree stand immediately on the bank of the branch; and was it or was not, in your opinion, easily to be found by any one in search of it? State whatever you know on that subject.

Answer. I know nothing of the corner of my own knowledge.

5th. Do you know any thing of James Patton's survey, when it was made? Say all you know about it.

Answer. Nothing.

6th. You have now before you James Patton's entry, dated the 26th day of December, 1782; his survey, dated the 30th day of September, 1783; and James Allen's entry of 1,000 acres, dated the 11th of October, 1783; and Edward Voss's entry, of the same date, calling for James Patton's northwest corner of his survey of his 8,400 acres as aforesaid. Is it your opinion or not, from what you know, that a subsequent locator or woodsman might, on the said 11th day of October, 1783, have easily found said Patton's beginning corner of his survey, and his northwest corner, which is the beginning of Voss and Allen? State what you know relative to this subject.

Answer. I know nothing of Patton's beginning corner; but I settled in the year 1796 within less than half a mile of Patton's northwest corner, and knew it well. The corner trees, a sugar-tree and two ash-trees, were plainly marked, and easily found, on the top of a high hill.

7th. When did you first become acquainted with Patton's survey of 8,400 acres; and was the beginning corner plainly marked or not on Patton's creek, and easily to be found? and was the line running 1,600 poles north to a sugar-tree and two ashes, on the top of a hill; plainly marked; and were the corner trees at each end of said line plainly marked and easily seen? State whatever you know on this subject.

Answer. I knew Patton's northwest corner well. It was a sugar-tree and two ash trees; they were plainly marked, and on the top of a high hill, on the waters of Barebone creek.

8th. You have James Patton's entry of 8,400 acres now before you—is it your opinion or not, from what you know of the objects called for and described in said entry, that the beginning corner of said entry could have been found by reasonable search and diligence at and before the 26th day of December, 1782, by any good woodsman acquainted in that part of the country?

Answer. I do not know. And further this deponent saith not.

Given under my hand, this 1st day of June, 1824.

JESSE LAW. [SEAL.]

OLDHAM COUNTY, sct.

The foregoing deposition was sworn to and subscribed before me, and in my presence, this 1st day of June, 1824. Given under my hand, as a justice of the peace for said county of Oldham, this day and date above written.

WILLIAM GATEWOOD. [SEAL.]

Farley's deposition.

The deposition of Joseph F. Farley, taken at the house of Jack Prior, in the county of Oldham, on the second day of June, 1824, to be read in evidence in the suit in chancery depending in the circuit court of the United States for the district of Kentucky, wherein John Holmes, Hugh Thompson, &c., are complainants, and John Howard, &c., are defendants, who, being first duly cautioned and sworn to speak the whole truth, by the undersigned, a justice of the peace for the said county, who caused the following interrogatories, as certified from under the hand of the clerk of said court, to be propounded to said deponent, deposeth and saith:

1st. Are you acquainted with the Ohio river, and Eighteen Mile creek that runs into it; and were you acquainted with them previous to December, 1782? and was the said Eighteen Mile creek notoriously and well known by that name at and before the 26th day of December, 1782? State all you know on this subject.

Answer. I have been acquainted with the river and said creek for about 20 years; have been a surveyor for about 13 years; and, since that time, have had many surveys to make on said waters, and was never at any difficulty in finding lines, creeks, or corners.

2d. Are you acquainted with the creek now called Patton's creek; and is that the first creek or branch that runs into the Ohio? and was or was not that creek notoriously known and called Patton's creek at and before the 20th day of October, 1783? and, if it was, was it so called because it was known or understood to be the creek on which James Patton made his location for 8,400 acres of land? State what you know or have understood on this subject.

Answer. I have known the creek, and know but very little also about matters contained in question. I have, however, a plat of the country made by my father, and there are but three small branches between 18 Mile creek and Patton's creek, the longest of which is not more than about 2½ or 3 miles to their head or to their first drain.

3d. Do you know any thing of a tree marked J. P., standing about two miles up the said branch, now called Patton's creek? And if you do, state whatever you know on that subject, and when you first saw the tree.

Answer. I was once engaged in a survey, and ran a line of Voss that called for Patton's beginning corner, where I think I saw a mulberry marked J. P down and tied with bark to the shore of the creek, about two miles up the creek; several other trees plainly marked, anciently.

4th. Did said tree stand immediately on the bank of the branch; and was it or not, in your opinion, easily to be found by any one in search of it? State whatever you know on that subject.

I think the tree might be easily found.

5th. Do you know any thing of James Patton's survey, when it was made? Say all you know about it.

I know nothing about it.

6th. You have now before you James Patton's entry, dated the 26th day of December, 1782; his survey, dated the 30th day of September, 1783; and James Allen's entry of 1,000 acres, dated 11th of October, 1783; and Edward Voss, of same date, calling for James Patton's northwest corner of his survey of his 8,400 acres as aforesaid; is it your opinion or not, from what you know, that a subsequent locator or woodsman might, on the said 11th day of October, 1783, have easily found said Patton's beginning corner of his survey, and his northwest corner, which is the beginning of Voss and Allen? State what you know relative to this subject.

Answer. The lines and corners are plainly marked, and I suppose might have been found by using ordinary diligence.

7th. When did you first become acquainted with Patton's survey of 8,400; and was the beginning corner plainly marked or not on Patton's creek, and easily to be found; and was the line running 1,600 poles north to a sugar-tree and two ashes on the top of a hill plainly marked; and were the corner trees at each end of said line plainly marked and easily seen? State whatever you know on this subject.

Answer. Patton's N. W. corner is a sugar and two white ashes, plainly marked on the top of a ridge. Further this deponent saith not.

JOS. F. FARLEY.

The foregoing deposition was sworn to, and signed before me, and in my presence, the day and date above written.

Given under my hand, &c.

WILLIAM GATEWOOD. [SEAL.]

Roberts's deposition.

The deposition of Benjamin Roberts, of lawful age, and first duly sworn, taken at the tavern of Taliaferro Mahonney, in the town of Shelbyville, this 30th day of August, 1824, to be offered as evidence in a certain matter of controversy now depending in the seventh circuit court of the United States in and for the Kentucky district, wherein John Holmes, &c., are complainants, and John Howard, &c., are defendants. This deponent saith:

Question 1st. Are you acquainted with the Ohio river, and Eighteen Mile creek that runs into it; and were you acquainted with them previous to December, 1782; and was the said Eighteen Mile creek notorious and well known by that name at and before the 26th day of December, 1782? State all you know on this subject.

Answer. I am acquainted with the Ohio river, and with Eighteen Mile creek that runs into it, and became acquainted with the same in December, 1783, and heard of the same by the name of Eighteen Mile creek from hunters from the year 1780, and believe it was notorious from that date.

Question 2d. Are you acquainted with the creek now called Patton's creek; and is that the first creek or branch that runs into the Ohio; and was or was not that notoriously known and called Patton's creek at and before the 10th day of October, 1783? and, if it was, was it so called because it was known or understood to be the creek on which James Patton made his location for 8,400 acres of land? State what you know or have understood on this subject.

Answer. I am acquainted with the creek from its head to the mouth. It is the first creek above the Eighteen Mile creek, of any notoriety, that empties into the Ohio river; and it was notoriously known and called by the name of Patton's creek in the spring of the year 1783; and it was understood to be the creek on which James Patton made his location previous to the 10th day of October, 1783.

Question 3d. Do you know any thing of a tree marked J. P., standing about two miles up the said branch, now called Patton's creek? And if you do, state whatever you know on that subject, and when you first saw the tree.

Answer. I know nothing about it.

Question 4th. Did said tree stand immediately on the bank of the branch; and was it or not, in your opinion, easily to be found by any one in search of it? State whatever you know on that subject.

Answer. I know nothing about it.

Question 5th. Do you know any thing of James Patton's survey, when it was made? Say all you know about it.

Answer. I do not know the survey, nor when it was made.

Question 6th. You have now before James Patton's entry, dated the 26th day of December, 1782; his survey, dated the 30th of September, 1783; and James Allen's entry of 1,000 acres, dated 11th of October, 1783; and Edward Voss's entry, of the same date, calling for James Patton's northwest corner of his survey of his 8,400 acres as aforesaid. Is it in your opinion or not, from what you know, that a subsequent locator or woodsman might, on the said 11th day of October, 1783, have easily found said Patton's beginning corner of his survey, and his northwest corner, which is the beginning of Voss and Allen? State what you know relative to this subject.

Answer. I know nothing of Patton's corners.

Question 7th. When did you first become acquainted with Patton's survey of 8,400 acres; and was the beginning corner plainly marked or not on Patton's creek, and easily to be found? and was the line running 1,600 poles north to a sugar-tree and two ashes on the top of a hill, plainly marked? and were the corner trees at each end of said line plainly marked and easily seen? State whatever you know on this subject.

Answer. I know nothing about it.

Question 8th. You have James Patton's entry of 8,400 acres aforesaid now before you; is it your opinion or not, from what you know of the objects called for and described in said entry, that the beginning corner of said entry could have been found by reasonable search and diligence at and before the 26th day of December, 1782, by any good woodsman acquainted in that part of the country?

Answer. It is my opinion that a good woodsman, having a knowledge of said entry, might have found it by searching from the mouth of the creek up, by paying attention to the calls of the entry. And further this deponent saith not.

BEN. ROBERTS.

KENTUCKY, *Shelby County, sct.*

I certify that the foregoing deposition of Benjamin Roberts was this day taken, subscribed, and sworn to before me, at the place, and for the purpose, in the preamble or caption stated.

Given under my hand and seal, as a justice of the peace in and for said county, at Shelbyville, this 30th day of August, 1824.

JOS. SIMRALL, *J. P. S. C.*

Sanders' deposition.

The deposition of Joseph Sanders taken at the house of John Murphy, in the county of Jefferson, State of Kentucky, on the 2d day of September, 1824, to be read as evidence in a suit in chancery, now depending in the circuit court of the United States for the district of Kentucky, wherein John Holmes, Hugh Thompson, &c., are complainants, and John Howard and others, are defendants, who, being first cautioned and sworn to speak the whole truth, by the undersigned, a justice of the peace for said county of Jefferson, who caused the following interrogatories, as certified from under the hand of the clerk of said court, to be propounded to said deponent, deposeth and saith—

1st. Are you acquainted with the Ohio river and Eighteen Mile creek that runs into it? and were you acquainted with them previous to December, 1782? and was the Eighteen Mile creek notorious and well known by that name at and before the 26th day of December, 1782? State all you know on this subject.

Answer. I was acquainted with the Ohio river from the year 1780, in June, and Eighteen Mile creek was then well known by that name, so far as I believe the said creek was known as Eighteen Mile creek.

2d. Are you acquainted with a creek now called Patton's creek? and is that the first creek or branch that runs into the Ohio river? and was or was not that creek notoriously known and called Patton's creek at and before the 10th day of October, 1783? and, if it was, was it so called because it was known or understood to be the creek on which James Patton made his location for 8,400 acres of land? State all you know or have understood on this subject.

Answer. Patton's creek is the first branch or creek of any note above Eighteen Mile creek. The said creek took its name from Capt. James Patton's making an entry on said creek, in 1782, for 8,400 acres of land.

3d Q. Do you know any thing of a tree marked J. P., standing about two miles up the said branch, now called Patton's creek? and, if you do, state whatever you know on that subject; and when you first saw the said tree.

Answer. In the spring of 1783, I believe in May, Capt. James Patton showed me a mulberry tree marked J. P. standing on the north bank of

Patton's creek, about two miles from the mouth of said creek; which tree Capt. Patton informed me, was his beginning of his 8,400 acre entry.

4th Quest. Did said tree stand immediately on the bank of the branch; and was it or not, in your opinion, easily to be found by any one in search of it? State whatever you know on that subject.

Answer. The tree stood immediately on the bank of Patton's creek, and, I think, might have been found by any one in search of it, as the letters J. P. were large and plain, I think, made with a tomahawk.

5th Qu. Do you know any thing of James Patton's survey, when it was made? Say all you know about it.

Answer. I know nothing about it.

6th Ques. You have now before you James Patton's entry, dated the 26th day of December, 1782; his survey, dated the 30th day of September, 1783, and James Allen's entry of 1,000, dated 11th of October, 1783; and Edward Voss's entry of the same date, calling for James Patton's northwest corner of his survey of his 8,400 acres as aforesaid. Is it your opinion or not, from what you know, that a subsequent locator or woodsman might, on the 11th day of October, 1783, have easily found said Patton's beginning corner of his survey, and his northwest corner which is the beginning of Voss and Allen? State what you know relative to this subject.

Answer. I know nothing of Patton's survey of 8,400 acres on Patton's creek, except the tree marked J. P., which Patton showed me in May, 1783, and said it was his beginning of his 8,400 acre survey.

7th Question. When did you first become acquainted with Patton's survey of 8,400 acres? and was the beginning corner plainly marked, or not, on Patton's creek, and easily to be found; and was the line running 1,600 poles, north to a sugar tree and two ashes, on the top of a hill, plainly marked and easily seen? State whatever you know on this subject.

Answer. I know nothing about it except the beginning—that was plainly marked; and I should suppose easily found by a man, or men, in search of it.

8th Question. You have James Patton's entry of 8,400 acres aforesaid now before you—is it your opinion or not, from what you know of the objects called for and described in said entry, that the beginning corner of said entry could have been found by reasonable search and diligence at and before the 26th of December, 1782, by any good woodsman acquainted in that part of the country?

Answer. I believe Capt. James Patton's beginning corner, on Patton's creek, of his 8,400 survey, might have been found, by reasonable search, by any person in search of it, at any time after it was made, as the letters J. P. were large, and, I believe, marked with a tomahawk. And further the deponent saith not.

JOSEPH SANDERS.

JEFFERSON COUNTY, sct.

The foregoing deposition was sworn to and signed before me, the undersigned, one of the commonwealth's justices of the peace for said county of Jefferson, on the day and date above. Given under my hand and seal, &c.

JOHN MURPHEY, *J. P. J. C.*

The following are the plats and reports filed in this cause, to wit:

The following letter, &c., are filed herein, to wit:

Holmes's letter to Morton.

H.

BALTIMORE, *Jan'y* 10, 1803.

Dr. MORTON.

The lands you sold on account of Mr. Short, were held by Mr. Thomson, Mr. Caton, and myself. Those gentlemen will correspond with you respecting them, to which you will please to attend. I will thank you do every thing in your power to get the necessary title papers, &c. For my proportion, Mr. Omealey (my trustee) has the direction, who will direct you as its respects me.

With real and sincere regard,
Your obedient servant,
JOHN HOLMES.

I.

Mr. W. MORTON:

The interest I had in the lands jointly with Mr. Holmes and Mr. Thompson, I, some time since, transferred to Mr. Wm. Slater, of this city, who will write you on the subject, in conjunction with Mr. Thompson and Mr. Omealey, (Mr. Holmes's trustee.)

I am, sir,
Your most obedient servant,
RICHARD CATON.

K.

BALTIMORE, 13*th January*, 1803.

SIR: The annexed letters from Mr. Holmes and Mr. Caton inform you of our being the proprietors and legal representatives of the land bought of Mr. Short, and heretofore held by Mr. Holmes, amounting, we believe, to 14,500 acres. By an agreement with Mr. Breckenridge, your Senator in Congress, he has undertaken to procure us a good title, and to effect a sale of the lands. We therefore request that you will surrender into his hands all the papers and documents you may have relating to them; that the title may be vested in him by Mr. Short and yourself; and, by this authority, we require yourself, Mr. Short, and all others concerned, to consider Mr. Breckenridge as our assignee for the lands in question, subject to the agreements entered into by Mr. Breckenridge and us.

We are, sir,
Your most obedient servants,
M. OMEALEY, *as Trustee for*
JOHN HOLMES.
WM. SLATER.
H. THOMPSON.

Mr. W. MORTON.

Lexington, 2d June, 1803.—Received this day from Mr. Morton, in consequence of the foregoing letter, the following papers, to wit:

A copy of a letter from Peyton Short to John Holmes, dated Richmond, 29th September, 1794.

An original letter from Peyton Short to Mr. Wm. Morton, dated Woodford, 2d April, 1795.

Also, a copy of a paper, dated Baltimore, 9th May, 1795, addressed to Mr. John Holmes, and signed by Wm. Morton, attorney for Peyton Short, respecting the conveyance of 14,000 acres of land. Upon the application of Mr. Morton hereafter, I will furnish him, in case he may think it useful, a copy of all the foregoing papers, or the ones which he has given me after Mr. Short has made the conveyances mentioned in the said papers.

JOHN BRECKENRIDGE.

The two first above mentioned papers have been returned by me to Mr. Morton, he having furnished me with a copy of them.

J. BRECKENRIDGE.

21*st September*, 1803.

Superscription on foregoing letter:

WILLIAM MORTON, Esq.,
Lexington,
Kentucky.

And afterwards. to wit, on a subsequent day of the term and year aforesaid, to wit, the May term, in the year 1830, on the 8th day of the said month, the following decree was rendered herein, to wit:

Decree.

The surveyor having made his report in pursuance to the interlocutory decree of this court, the court do decree and order that the defendants, John Moreland, William Moreland, and Walter Moreland, convey to the complainants, with specially warranty, one-half or moiety of so much of Christopher Clarke's survey of four hundred acres, as is included within the line designated on the surveyor's report by the letter C, and figure 2, and the original lines of Clarke's survey below or south of said line. And the court do further decree and order that the said defendants and complainants make partition of the same; and that the said Jonathan Taylor, the surveyor, divide and partition the same as nearly equal in quantity and value as is practicable: and that he report to this court, for their approval, the metes and bounds of the moiety allotted to the complainants. And the court do further decree and order that the said defendants, John Moreland, William Moreland, and Walter Moreland, pay to the complainants their costs herein expended And the court do decree and order that so much of the bill as seeks redress against the defendants within the claim of Daniel and Hite, to wit, Daniel Trout, Jeremiah Trout, Jacob Overpeck, and William Buckannon, be dismissed, and that the complainants pay to them their costs. And the court do order and decree that the suit, as to the other defendants named in the bill, be continued.